IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

CHURCH OF SCIENTOLOGY, INTERNATIONAL,
Plaintiff/Respondent,

vs.

GERALD ARMSTRONG,
Defendant/Appellant.

NO. A075027

CLERK'S TRANSCRIPT ON APPEAL

FROM A JUDGMENT MADE AND ENTERED

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

MARIN COUNTY COURTS

VOLUME 2

For the Plaintiff/Respondent:

Andrew Wilson, Esq.
WILSON, RYAN & CAMPILONGO
115 Sansome Street, 4th Floor
San Francisco, CA 94104

For the Defendant/Appellant (In Pro Per):

Gerald Armstrong
715 Sir Francis Drake Blvd.
San Anselmo, CA 94960

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

MARIN COUNTY COURTS

DEPARTMENT 1

CHURCH OF SCIENTOLOGY, INTERNATIONAL, **Plaintiff,**	)	
vs.	)	
GERALD ARMSTRONG, **Defendant.**	)	**No. 157680**

GARY W. THOMAS	**JUDGE**
JOHN P. MONTGOMERY	**COURT EXECUTIVE OFFICER**
ELAINE PASSARIS	**REPORTER**

For the Plaintiff:

Andrew Wilson, Esq.
WILSON, RYAN & CAMPILONGO
115 Sansome Street, 4th Floor
San Francisco, CA 94104

For the Defendant (In Pro Per):

Gerald Armstrong
715 Sir Francis Drake Blvd.
San Anselmo, CA 94960

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M. Briseño
BY M. BRISENO, DEPUTY

Ford Greene, Esquire
California State Bar No. 107601
HUB LAW OFFICES
711 Sir Francis Drake Boulevard
San Anselmo, California 94960-1949
Telephone: (415) 258-0360

PAUL MORANTZ, ESQ.
P.O. Box 511
Pacific Palisades, CA 90272
(213) 459-4745

Attorneys for Defendant
GERALD ARMSTRONG

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

157680

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation;

Plaintiffs,

vs.

GERALD ARMSTRONG; DOES 1 through 25, inclusive,

Defendants.

GERALD ARMSTRONG,

Cross-Complainant,

-vs-

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California Corporation, CHURCH OF SCIENTOLOGY OF CALIFORNIA, a California Corporation, RELIGIOUS TECHNOLOGY CENTER, a California Corporation, CHURCH OF SPIRITUAL

No. BC 052395

VERIFIED AMENDED CROSS-COMPLAINT FOR DECLARATORY RELIEF, ABUSE OF PROCESS, AND BREACH OF CONTRACT

ORIGINAL

TECHNOLOGY,)
a California Corporation,)
AUTHOR SERVICES, INCORPORATED,)
a California Corporation,)
AUTHOR'S FAMILY TRUST, ESTATE)
OF L. RON HUBBARD, DAVID)
MISCAVIGE, NORMAN STARKEY)
and DOES 1 through 100,)
inclusive,)
)
Cross-Defendants.)
)
)

Cross-Complainant GERALD ARMSTRONG alleges as follows:

PARTIES

1. Cross-Complainant GERALD ARMSTRONG, hereinafter, "ARMSTRONG," is a resident of Marin County, California.

2. Cross-Defendants CHURCH OF SCIENTOLOGY INTERNATIONAL, hereinafter "CSI," CHURCH OF SCIENTOLOGY OF CALIFORNIA, hereinafter "CSC," RELIGIOUS TECHNOLOGY CENTER, hereinafter "RTC," CHURCH OF SPIRITUAL TECHNOLOGY, hereinafter "COST," and AUTHOR SERVICES, INCORPORATED, hereinafter "ASI," are corporations organized and existing under the laws of the State of California, having principal offices and places of business in California and doing business within the State of California within the territorial jurisdiction of this Court.

3. Cross-Defendants AUTHOR'S FAMILY TRUST, hereinafter "AFT," and ESTATE OF L. RON HUBBARD, hereinafter "ERH," are entities that are residents of the State of California.

4. Cross-Defendant DAVID MISCAVIGE, hereinafter "MISCAVIGE," is an individual domiciled in the State of California.

5. Cross-Defendant NORMAN STARKEY, hereinafter "STARKEY," is an individual domiciled in the State of California.

6. At all times herein mentioned, each Cross-Defendant was the agent, employee or coconspirator of each of the remaining Cross-Defendants, and in doing the things herein mentioned, each Cross-Defendant was acting within the course and scope of its employment and authority as such agent and/or representative and/or employee and/or coconspirator, and with the consent of the remaining Cross-Defendants.

7. Corporate Cross-Defendants named in paragraph 2, above, are subject to a unity of control, and the separate alleged corporate structures were created as an attempt to avoid payment of taxes and civil judgments and to confuse courts and those seeking redress for these Cross-Defendants' acts. Due to the unity of personnel, commingling of assets, and commonality of business objectives, these Cross-Defendants' attempts at separation of these corporations should be disregarded.

8. The designation of Cross-Defendants as "churches" or religious entities is a sham contrived to exploit the protection of the First Amendment of the United States Constitution and to justify their criminal, and tortious acts against ARMSTRONG and their others. Cross-Defendant corporations are an international, money-making, politically motivated enterprise which subjugates and exploits its employees and customers with coercive psychological techniques, threat of violence and blackmail. Cross-Defendant corporations, CSI, CSC, RTC, COST and ASI act as one organization and are termed hereinafter as the "ORG."

9. Cross-Defendant MISCAVIGE controls and operates the ORG and uses it to enforce his orders and carry out his attacks on

groups, agencies or individuals, including the acts against ARMSTRONG alleged herein to the extent there is no separate identity between MISCAVIGE and the ORG and any claim of such separate identity should be disregarded.

10. Cross-Defendant entities AFT and ERH derive financial benefit from the ORG, participate in its acts against groups, agencies or individuals, including ARMSTRONG, and participate in MISCAVIGE's and the ORG's efforts to avoid payment of taxes and civil judgments and to confuse courts and persons seeking redress of grievances against MISCAVIGE and the ORG.

11. Cross-Defendant STARKEY controls and operates AFT and ERH and uses them in conspiracy with MISCAVIGE to carry out their attacks on groups, agencies or individuals, including the acts against ARMSTRONG alleged herein.

12. Cross-Defendants DOES 1 through 100, inclusive, are sued herein under such fictitious names for the reason that the true names and capacities of said Cross-Defendants are unknown to ARMSTRONG at this time; that when the true names and capacities of said Cross-Defendants are ascertained ARMSTRONG will ask leave of Court to amend this Cross-Complaint to insert the true names and capacities of said fictitiously named Cross-Defendants, together with any additional allegations that may be necessary in regard thereto; that each of said fictitiously named Cross-Defendants claim that ARMSTRONG has a legal obligation to Cross-Defendants by virtue of the facts set forth below; that each of said fictitiously named Cross-Defendants is in some manner legally responsible for the acts and occurrences hereinafter alleged.

FACTUAL ALLEGATIONS

13. From 1969 through 1981 ARMSTRONG was a Scientologist who devoted his life to Scientology founder, L. Ron Hubbard, the ideals he proclaimed and the Scientology organization he claimed to have built to promulgate those ideals. After leaving Hubbard's and the organization's employ and control in December 1981, ARMSTRONG was declared by the ORG a "Suppressive Person," or "SP," which designated him an "enemy," and became the target of Hubbard's policy of "Fair Game," which states:

> "ENEMY - SP Order. Fair Game. May be deprived of property or injured by any means by any Scientologist without any discipline of the Scientologist. May be tricked, sued or lied to or destroyed."

The ORG, using Cross-Defendant herein CSC as Plaintiff, filed a lawsuit, No. C 420153, in the Los Angeles Superior Court against ARMSTRONG on August 2, 1982. ARMSTRONG filed a Cross-Complaint against Cross-Defendants CSC and L. RON HUBBARD September 17, 1982, and a Third Amended Cross-Complaint against Cross-Defendants CSC, CSI, RTC and L. RON HUBBARD July 1, 1983. The Complaint and the Cross-Complaint thereto, hereinafter referred to together as Armstrong I, were bifurcated and the underlying Complaint was tried without a jury in 1984. A Memorandum of Intended Decision was rendered by Judge Paul G. Breckenridge, Jr. June 20, 1984 and entered as a Judgment August 10, 1984. The ORG appealed.

14. During the Armstrong I litigation the ORG carried out a massive and international campaign of Fair Game against ARMSTRONG and his lawyer, Michael J. Flynn of Boston,

Massachusetts, hereinafter "Flynn," who had been the prime mover in much of the anti-ORG-related litigation throughout the United States. Acts against ARMSTRONG pursuant to Fair Game included assault, an attempted staged highway accident, attempted entrapment, theft of private papers and original artwork, dissemination of information from his confidential "counseling" records, filing false criminal charges on at least five occasions, global defamation, threat of murder, and illegal electronic surveillance. ARMSTRONG learned during the period he was represented in the litigation by Flynn that Fair Game acts against Flynn included attempted murder, theft of private papers, threats against his family, defamation, thirteen frivolous lawsuits, spurious bar complaints, and framing with the forgery of a $2,000,000 check on a bank account of L. Ron Hubbard.

15. In the fall of 1986, while working as a paralegal in the Flynn firm, ARMSTRONG was aware that settlement talks involving all the ORG-related cases in which Flynn was either counsel or party were occurring in Los Angeles, California between Flynn and the ORG. Such talks had occurred a number of times over the prior four years. On December 5, 1986 ARMSTRONG was flown to Los Angeles, as were several other of Flynn's clients with claims against the organization, to participate in a "global settlement." Prior to flying to Los Angeles, ARMSTRONG had reached an agreement with Flynn on a monetary figure to settle Armstrong I, but did not know any of the other conditions of settlement.

16. After ARMSTRONG's arrival in Los Angeles, Flynn showed him a copy of a document entitled "Mutual Release of All Claims and Settlement Agreement," hereinafter "the settlement

agreement," and some other documents including affidavits, and was advised by Flynn that he was expected to sign them all. Upon reading the settlement agreement ARMSTRONG was shocked and heartsick. ARMSTRONG told Flynn that the condition of "strict confidentiality and silence with respect to his experiences with the" ORG, since it involved over seventeen years of his life was impossible to perform. ARMSTRONG told Flynn that the liquidated damages clause was outrageous; that pursuant to the agreement ARMSTRONG would have to pay $50,000.00 if he told a medical doctor or psychologist about his experiences from those years, or if he put on a job resume what positions he had held during his organization years. He told Flynn that the requirements of non-amenability to service of process and non-cooperation with persons or organizations adverse to the ORG were obstructive of justice. He told Flynn that agreeing to leave the ORG's appeal of the Breckenridge decision and not respond to any subsequent appeals was unfair to the courts and all the people who had been helped by the decision. ARMSTRONG told Flynn that an affidavit the ORG was demanding that he sign was false, that there had been no management change, that his private preclear folders were still being culled, and that he had the same disagreements with the ORG's Fair Game policies and actions, which had continued without change up to that date. ARMSTRONG told Flynn that he was being asked to betray everything and everyone he had fought for against organization injustice.

17. In answer to ARMSTRONG's objections to the settlement agreement Flynn said that the silence and liquidated damages clauses, and anything which called for obstruction of

justice were "not worth the paper they [were] printed on." Flynn stated that representation a number of times and in a number of ways; e.g., that ARMSTRONG could not contract away his Constitutional rights; that the conditions were unenforceable. Flynn stated that he had advised the ORG's lawyers that those conditions in the settlement agreement were not worth the paper they were printed on, but that the ORG, nevertheless, insisted on their inclusion and would not agree to any changes. Flynn pointed out to ARMSTRONG the clauses in the settlement agreement concerning his release of his claims against the ORG and the ORG's release of its claims against ARMSTRONG and stated that they were the essential elements of the settlement and what the organization was paying for.

18. Flynn stated to ARMSTRONG at that time that he was sick of the litigation and the threats to him and his family, and that he wanted to get out. Flynn stated that all the people involved in his side of the ORG-related litigation were sick of it and wanted to get on with their lives. He said that as a condition of settlement he and his co-counsels in the ORG-related litigation had agreed to not become involved in that litigation in the future. Flynn conveyed to ARMSTRONG a hopelessness concerning the inability of the courts of this country to deal with the ORG, its lawyers and their contemptuous abuse of the justice system. Flynn told ARMSTRONG that if he didn't sign the documents all he had to look forward to was more years of harassment and misery. When ARMSTRONG expressed his continuing objections to the settlement agreement, Edward Walters, whom Flynn had kept present in the room during this discussion with ARMSTRONG, and who was

another of Flynn's clients and a participant in the settling of Flynn's ORG-related litigation, yelled at ARMSTRONG accusing him of killing the settlement for everyone, that everyone else had signed or would sign, and that everyone else wanted the settlement. Flynn told ARMSTRONG that the ORG would only settle with everyone together; otherwise there would be no settlement. Flynn did agree to ask the ORG to include a clause in ARMSTRONG's settlement agreement allowing him to keep his creative works relating to L. Ron Hubbard or the organization.

19. Flynn stated to ARMSTRONG that a major reason for the settlement's "global" form was to give the ORG the opportunity to change its combative attitude and behavior by removing the threat he and his clients represented to it. He said that the ORG wanted peace and unless ARMSTRONG signed the ORG's documents there would be no peace. Flynn stated that the ORG's attorneys had promised that the affidavit ARMSTRONG considered false would only be used by the ORG if ARMSTRONG began attacking it after the settlement. Since ARMSTRONG had no intention of attacking the ORG, understood that the offensive affidavit would never see the light of day.

20. During ARMSTRONG's meeting with Flynn he found himself facing a dilemma. If he refused to sign the settlement agreement and affidavit all the other settling litigants, many of whom had already been flown to Los Angeles in anticipation of a settlement, would be disappointed and would continue to be subjected to organization harassment for an unknown period of time. ARMSTRONG had been positioned as a deal-breaker and led to believe he would lose the support of some, if not all, of the

settling claimants, several of whom were key witnesses in his case against the ORG. ARMSTRONG was led to believe that all the lawyers involved in his case desperately wanted out of the ORG-related litigation, and should he not sign the settlement documents would become unhappy and unwilling in their representation of him. ARMSTRONG reasoned that, on the other hand, if he did sign the settlement documents all his co-litigants, some of whom he knew to be in financial trouble, would be happy, the stress they felt would be reduced and they could get on with their lives. ARMSTRONG believed that Flynn and his other lawyers would be happy and the threat to them and their families removed. ARMSTRONG believed that the ORG would have the opportunity its lawyers said it desired to clean up its act, and start anew. Armed with Flynn's assurance that the conditions he found so offensive in the settlement agreement were not worth the paper they were printed on, and the knowledge that the ORG's attorneys were also aware of that fact, ARMSTRONG put on a happy face and on the following day went through the charade of a videotaped signing. A true and correct copy of the settlement agreement is attached hereto as Exhibit A.

21. On December 11, 1986, pursuant to stipulation, Judge Breckenridge issued orders dismissing the Armstrong I Cross-Complaint, directing that the settlement agreement be filed and retained by the clerk under seal, releasing to the ORG all trial exhibits and other documents which had been held by the clerk of the Court, and sealing the entire Court file. Despite the Court's specific order the ORG never filed the Settlement Agreement.

22. On December 18, 1986 the California Court of

Appeal, Second Appellate District, Division Three, issued an unpublished opinion dismissing the ORG's appeal from the Breckenridge decision on the ground that there would be no appealable final judgment until after trial of the Armstrong I Cross-Complaint.

23. The ORG filed a Petition for Rehearing of its appeal in the Court of Appeal, which was denied January 15, 1987; then a Petition for Review by the California Supreme Court which was denied March 11, 1987. On January 30, 1987 the ORG filed in the Los Angeles Superior Court an "Unopposed Motion to Withdraw Memorandum of Intended Decision," which Judge Breckenridge denied February 2, 1987. On February 9, 1987 the ORG filed a Notice of Appeal from the orders issued pursuant to stipulation by Judge Breckenridge on December 11, 1986.

24. The ORG, and all Cross-Defendants herein, did not desire peace from the December 1986 settlement with ARMSTRONG but an advantage wherein they could continue to attack him without his being able to respond. They removed his lawyers from defending him, and used his lead lawyer, Flynn, as their agent to relay to ARMSTRONG threats of litigation and to keep him from responding to their attacks. Immediately following the settlement ORG operatives contacted Beverly Rutherford, one of ARMSTRONG's friends from his pre-Scientology past, to try to get information from her concerning ARMSTRONG of a personal and embarrassing nature to be used against him. Also immediately following the settlement the ORG delivered a pack of documents concerning and attacking ARMSTRONG to reporters Robert Welkos and Joel Sappell of the Los Angeles Times. The ORG has continued from the date of the

settlement to collect intelligence information on ARMSTRONG, to consider him an enemy and to treat him as Fair Game. The settlement itself in intention, form, and effect was an act of Fair Game.

25. Although contacted a number of times by the media for statements concerning the ORG or Hubbard in the three years following the settlement, ARMSTRONG did not make any public statements during that period.

26. In the fall of 1987 ARMSTRONG received a document, which had been created and circulated by the ORG to discredit ARMSTRONG and writer Bent Corydon. In this document the ORG accused ARMSTRONG of "numerous false claims and lies," of "incompetence as a researcher," as having "stolen valuable documents from [ORG] archives," and of being part of "a small cabal of thieves, perjurers and disreputable sources." Such statements were themselves lies, known to the ORG to be lies, malicious, and intended to destroy ARMSTRONG's reputation and credibility. In this document as well the ORG describes ARMSTRONG's experiences in the organization as Hubbard's archivist and biographical researcher, and discusses aspects of the Armstrong I litigation, all in violation of the letter and spirit of the settlement.

27. In early 1988 ARMSTRONG received a number of affidavits the ORG had filed in Miller, which accuse ARMSTRONG of, inter alia, retaining documents in violation of a Los Angeles Superior Court order, providing documents to Russell Miller in violation of a court order, and violating court sealing orders. The affidavits accuse ARMSTRONG of being "an admitted agent

provocateur of the U.S. Federal Government who planned to plant forged documents in [ORG] files which would then be "found" by Federal officials in subsequent investigations as evidence of criminal activity," and of intending to "plant forged documents within the [ORG] and then using the contents to get the [ORG] raided. All of the ORG's accusations regarding ARMSTRONG in the affidavits filed in Miller are false, known by the ORG to be false, malicious and intended to destroy ARMSTRONG's credibility. ARMSTRONG has proven repeatedly to the ORG that its accusations are false, but the ORG has not corrected the falsehoods wherever they have been uttered or written but has continued to spread its lies about ARMSTRONG.

28. The ORG's affidavits filed in Miller also contain descriptions of ARMSTRONG's experiences in the organization and conditions of the settlement agreement. At the same time the ORG demanded that ARMSTRONG not discuss his own experiences or conditions of settlement on penalty of $50,000.00 an utterance. The ORG itself filed documents in the case straight out of the sealed Armstrong I file. Such acts are intended to bring about ARMSTRONG's mental disintegration and total destruction, are conscious and premeditated acts by the ORG of Fair Game, and have caused ARMSTRONG great anguish.

29. Also in October 1987 ARMSTRONG was contacted by a reporter from the London Sunday Times who advised him that ORG representatives had given the newspaper a pack of documents concerning him. The reporter said that the ORG representatives were claiming that ARMSTRONG was an agent provocateur who tried to plant forged documents in the organization and wanted to destroy

the scientology religion. The reporter also said that the ORG representatives had given the newspaper a videotape of ARMSTRONG they claimed showed him conspiring to overthrow ORG management. ARMSTRONG told the reporter that although he considered the ORG's attacks violated the settlement agreement he would not respond to them.

30. On December 21, 1988 ARMSTRONG received a call from Flynn who relayed a message from Michael Lee Hertzberg, one of the organization's leading lawyers stating that he wanted ARMSTRONG to file a pleading to keep the court file sealed in the face of efforts by the plaintiff in Corydon v. CSI, Los Angeles Superior Court case no. C 694401, who had filed a motion to unseal the Armstrong I court file. Flynn stated that Hertzberg had threatened that if ARMSTRONG failed to cooperate Hertzberg would release a private and personal document belonging to ARMSTRONG regarding one of his dreams specifically sealed by Judge Breckenridge in Armstrong I.

31. On December 27, 1988 ARMSTRONG spoke again by phone with Flynn, who advised ARMSTRONG that due to a court order unsealing the file in Armstrong I, he was going to file a pleading to say that the settlement documents should remain sealed. ARMSTRONG disagreed and advised Flynn he did not want such a paper filed, but on November 15, 1989 ARMSTRONG received notice that Flynn had filed such a paper against his wishes.

32. On October 11, 1989 ARMSTRONG was served with a deposition subpoena duces tecum which had been issued by Toby Plevin, an attorney representing Corydon in his litigation against the ORG.

33. On October 23, 1989 ARMSTRONG received a call from Heller who stated that the ORG would seek a protective order to prevent Armstrong's deposition in Corydon from going forward, that Armstrong should be represented by an ORG lawyer, that to maintain the settlement agreement ARMSTRONG could only answer questions by court order, that ARMSTRONG should refuse to answer the deposition questions and force Corydon to get an order from the court compelling ARMSTRONG to answer.

34. On October 25, 1989 Heller told ARMSTRONG that he had a problem with ARMSTRONG responding to deposition questions concerning such things as L. Ron Hubbard's misrepresentations or ARMSTRONG's period as Hubbard's archivist in the organization, that he wanted to have an attorney present to instruct ARMSTRONG not to answer such questions so that Corydon would have to move to compel an answer, and that if the court ordered sanctions for ARMSTRONG's refusal to answer, the ORG would indemnify him. Heller further stated that ARMSTRONG had a contractual obligation to the ORG, and that if ARMSTRONG did answer deposition questions he would have breached the settlement agreement and may be sued.

35. Based on Heller's threats, the earlier threats and ORG post-settlement attacks described above, ARMSTRONG's understanding of his importance to and involvement with the ORG, and his knowledge of the ORG, its fraud and Fair Game, moved him at that time to protect himself by beginning to assemble documentation and prepare a declaration to oppose these ORG abuses.

36. On November 1, 1989 Heller, on behalf of ORG entity ASI, a defendant in Corydon, filed a motion "to Delay or Prevent

the Taking of Certain Third Party Depositions," relating to the deposition of ARMSTRONG. Heller stated in the motion:

> "One of the key ingredients to completing these settlement, insisted upon by all parties involved, was strict confidentiality respecting: (1) the Scientology parishioner or staff member's experiences within the Church of Scientology; (2) any knowledge possessed by the Scientology entities concerning those staff members or parishioners; and (3) the terms and conditions of the settlements themselves."

37. On November 18, 1989 ARMSTRONG received a copy of a videotape edited from videotapes of him made in 1984 by ORG intelligence operatives and used thereafter against him. This copy had been given to the London Sunday Times, along with a package of documents concerning ARMSTRONG by ORG operatives. Taped to the video cassette was the business card of Eugene M. Ingram, the ORG's private detective who had set up the videotaping.

38. On November 20, 1989 Heller contacted ARMSTRONG and advised him that he wanted ARMSTRONG to execute ORG a declaration that ARMSTRONG had either no or minimal contact with Corydon in the organization, and that subsequent to leaving he had received no information about Corydon. ARMSTRONG told Heller that he knew Corydon quite well and that he saw himself as a relevant witness, and would go forward with the deposition. Heller said to do so would be a mistake because only the ORG would ever help him, that ARMSTRONG should assist the ORG because it had honored its agreement, that the ORG had signed a non-disclosure agreement as well and as far as he knew had lived up to its agreement. When

ARMSTRONG disagreed, Heller reiterated at the end of the conversation that if ARMSTRONG started to testify, for example about the Hubbard biography project, or things he and the ORG considered irrelevant, he would be sued for breach of contract.

39. On November 30, 1989 ARMSTRONG attended a hearing in Corydon of the ORG's motion to prevent his deposition from going forward where he was served with a subpoena duces tecum ordering him to appear as a witness in the trial of Religious Technology Center v. Joseph A. Yanny, Los Angeles Superior Court Case no. C 690211.

40. On February 15, 1990 ARMSTRONG received a call from one of Michael Flynn' partners, attorney Michael A. Tabb, who said he had been called by Heller who told him that the ORG considered ARMSTRONG had violated the settlement agreement by being in the courthouse when he was served in Yanny, that they intended to prove it, and that he would be sued.

41. On January 18, 1990 ARMSTRONG received a copy of Appellants' Opening Brief which the ORG had filed December 21, 1989 in appeal No. B025920 in Division Three of the Second Appellate District in the California Court of Appeal wherein the ORG sought a reversal of the 1984 Breckenridge decision. On January 30, 1990 ARMSTRONG received the Reply Brief of Appellants and Response to Cross-Appeal filed in Division Four in the Second Appellate District in an appeal entitled Church of Scientology of California and Mary Sue Hubbard, Appellants, against Gerald Armstrong, Defendant; Bent Corydon, Appellee, No. B038975 in which the ORG sought a reversal of Judge Geernaert's ruling unsealing the Armstrong I court file.

42. Because the settlement agreement prohibited ARMSTRONG from opposing any of the appeals the ORG might take, he filed a Petition for Permission to Respond in the B025920 Division Three appeal February 28, 1990, and in the B038975 Division Four appeal March 1, 1990. When his petitions were granted, ARMSTRONG filed a Respondent's Briefs opposing the ORG appeals.

43. ARMSTRONG's March 15, 1990 declaration that he had filed in the Court of Appeal was used by Corydon as an exhibit supporting a motion for an order directing non-interference with witnesses. In its opposition thereto the ORG Heller contradicted what he earlier had said to ARMSTRONG about the agreement being reciprocal, now stating that the ORG was free to talk about Armstrong, but that Armstrong was not free to talk about it. Heller's lies to ARMSTRONG, his lies in sworn declarations about the reciprocality of the settlement agreement, the trap ARMSTRONG had been placed in by the ORG and his own attorney, who, because of ORG Fair Game tactics, had deserted him, caused ARMSTRONG great distress and grief.

44. In his March 27 1990, declaration and in the opposition to plaintiff's motion for non-interference with witnesses in Corydon, Heller denied that the three telephone calls with ARMSTRONG occurred, denied offering to have the ORG pay for an attorney at ARMSTRONG's deposition in Corydon, denied offering to indemnify ARMSTRONG for sanctions which might be imposed by the court, and denied threatening ARMSTRONG with litigation. These denials are lies.

45. In his March 26, 1990 declaration, Kenneth Long, the ORG staff member who had executed a number of the affidavits

concerning ARMSTRONG which were filed in the Miller case, stated:

> "In January, 1987, following settlement of Scientology (sic) of California ("CSC"), Armstrong turned over to CSC all [ORG]-related documents in his possession. I personally inspected the documents turned over by Armstrong, and found a number of copies of the documents which Armstrong had previously sworn that he had surrendered to the Clerk of the Court. [ ] Based on my discovery of these documents, I concluded that Armstrong had intentionally perjured himself on numerous occasions, and had as well knowingly violated orders issued by judges at all levels ranging from the Los Angeles Superior Court to the Supreme Court of the United States."

Long's statement is false, reckless and malicious. Long stated as well that his affidavits attacking ARMSTRONG in Miller were necessary "to detail the elements of the breach of confidence against Miller and Penguin, and the claim could not have been brought without explaining the underlying actions taken by Armstrong."

46. On March 21, 1990 ARMSTRONG spoke by phone with Michael Flynn, who said that he had been called by Lawrence Heller two or three weeks before. Flynn said that Heller told him that ARMSTRONG was right then sitting in the courtroom at the Yanny trial and he asked Flynn to call ARMSTRONG and tell him that if he testified in Yanny he would be in violation of the settlement agreement and would be sued. ARMSTRONG had been present at the Yanny trial March 5, 1990.

47. In early April, 1990 ARMSTRONG received a call from ORG lawyer Eric Lieberman who threatened dire consequences if ARMSTRONG continued to speak out against the ORG in violation of the settlement agreement. ARMSTRONG related to Lieberman a list of the ORG's post-settlement attacks on ARMSTRONG in violation itself of the agreement. Lieberman dismissed ARMSTRONG's grievances as insignificant.

48. On July 8, 1988 the Internal Revenue Service issued a document entitled "final adverse ruling" to Cross-Defendant herein COST denying its application for tax exempt status. In that ruling the IRS stated:

> "In support of the protest (protest conference was held in January 1987) to our initial adverse ruling, we were supplied with copies of affidavits dated December 4, 1986, from Gerald Armstrong and Laurel Sullivan. Ms. Sullivan was the person in charge of the MCCS project (the ORG's "Mission Corporate Category Sort-out," the purpose of which was to devise a new organizational structure to conceal L. Ron Hubbard's continued control). The affidavits state that the new church management 'seems to have returned to the basic and lawful policies and procedures as laid out by the founder of the religion, L. Ron Hubbard.' The affidavits conclude as follows: 'Because of the foregoing, I no longer have any conflict with the Church of Scientology or individual members affiliated with the Church. Accordingly I have executed a mutual release agreement with the Church of Scientology and sign this

> affidavit in order to signify that I have no quarrel with the Church of Scientology or any of its members.'"

The ORG filed the ARMSTRONG affidavit in the COST case for the purpose of destroying his credibility and in violation of the representation the ORG had Flynn make to ARMSTRONG during settlement that such affidavit would never be used unless ARMSTRONG attacked the ORG after settlement. The ORG's filing of the affidavit, its use of the courts, and the campaign to destroy ARMSTRONG's reputation have caused ARMSTRONG great emotional distress.

49. In August 1991 while in South Africa ARMSTRONG was informed by Stuart Cutler, a lawyer for Malcolm Nothling, litigant against the ORG, that the ORG had provided ARMSTRONG's personal papers regarding the 1985 dream which had been sealed in Armstrong I, to the ORG's South African legal representatives for use against ARMSTRONG in the Nothling litigation in which ARMSTRONG was expected to testify. The dissemination of this document in South Africa caused ARMSTRONG great embarrassment and emotional distress.

50. On August 12, 1991 the ORG filed a lawsuit against 17 agents of the IRS, case no. 91-4301-SVW in United States District Court, Central District of California for more than $120,000,000.00. The ORG used therein a false rendition of the 1984 illegal videotaping of ARMSTRONG, which videotape had been sealed in the Armstrong I court file. The ORG stated in its complaint:

> "The infiltration of the [ORG] was planned by the LA CID along with former [ORG] member Gerald Armstrong, who

> planned to seed [ORG] files with forged documents which the IRS could then seize in a raid. The CID actually planned to assist Armstrong in taking over the [ORG] hierarchy which would then turn over all [ORG] documents to the IRS for their investigation."

The ORG knew that these accusations were false, knew that ARMSTRONG knew they were false.

51. Upon his return to the United States from South Africa, Armstrong visited the law office of Ford Greene who asked for his help. Armstrong, who is a trained paralegal, and lived in the same Marin County town as Greene, agreed to help him, and has been working with him from that time until the present. The moment he began working in Greene's office the ORG began to terrorize him with constant surveillance by ORG intelligence operatives, videotaped him, embarrassed him, caused disturbances in the neighborhood of Greene's law firm, and caused him great fear. The ORG has a reputation of using its intelligence operatives or private investigators to assault its perceived enemies, frame them, entrap them, terrorize them, lie about them, and steal from them. Judge Breckenridge in Armstrong I, had found that:

> "Defendant Armstrong was the subject of harassment, including being followed and surveilled by individuals who admitted employment by [the ORG]; being assaulted by one of these individuals; being struck bodily by a car driven by one of these individuals; having two attempts made by said individuals apparently to involve Defendant Armstrong in a freeway automobile accident; having said individuals come onto Defendant Armstrong's property,

spy in his windows, create disturbances, and upset his neighbors."

The August 1991 surveillance of ARMSTRONG by ORG operatives was intended to and caused ARMSTRONG severe shock and emotional distress.

52. ARMSTRONG called and wrote to ORG lawyer Eric Lieberman on August 21 and 22, 1991 protesting the surveillance, videotaping and ORG terror tactics. Lieberman never responded, but the ORG responded with renewed attacks on ARMSTRONG, filing perjurious declarations about him in the Aznaran case accusing him of, inter alia, being in Greene's office (during the period when he had been in South Africa), of being employed by Joseph Yanny while working for Greene, and of being Yanny's extension in the Aznaran case. The ORG used these lies in a series of attempts to have the Aznaran case dismissed, and in further attempts to destroy ARMSTRONG's credibility and his capacity to defend himself from the ORG's attacks. The ORG also filed perjurious declarations in Aznaran concerning the illegal 1984 Armstrong operation, claiming, inter alia, that the operation was a police-sanctioned investigation, that ARMSTRONG was plotting against the ORG and seeking out staff members who would be willing to assist him in overthrowing its leadership, and that ARMSTRONG's theory of litigation against the ORG was to fabricate the facts. These lies were used in a series of attempts to deny the Aznarans justice and to attack ARMSTRONG's credibility and leave him defenseless before the ORG's assault. The ORG moreover used in these attempts transcripts of the illegal 1984 videotaping of ARMSTRONG which had been sealed in the Armstrong I court file. The ORG knew its lies

filed in the Aznaran case regarding ARMSTRONG were lies, knew it was using sealed documents to attack ARMSTRONG, knew that such caused ARMSTRONG great emotional distress, and knew that its acts in Armstrong I had caused him emotional distress for which it had paid ARMSTRONG a significant sum of money. The ORG's statements filed in Aznaran regarding ARMSTRONG were malicious and an abuse process. ARMSTRONG filed a declaration in Aznaran dated September 3, 1991 detailing the lies the ORG had up to that time filed about him in that case and stating the truth of the matters. On June 23, 1992, Judge Ideman, presiding in the Aznaran case denied all the ORG's motions in which it had filed its attacks on ARMSTRONG.

53. On October 3, 1991 the ORG, using CSC, CSI and RTC as Plaintiffs, filed a motion in Los Angeles Superior Court in the Armstrong I case to enforce the settlement agreement in which it charged that ARMSTRONG's declaration in Aznaran which rebutted the ORG's lies filed about him in that case was a violation of the settlement agreement. That motion, in which the ORG sought from ARMSTRONG $100,000.00 in damages for his responses to ORG attacks, was denied on December 23, 1991 by Judge Geernaert, who stated during the hearing of that date:

> " So my belief is Judge Breckenridge, being a very careful judge, follows about the same practice and if he had been presented that whole agreement and if he had been asked to order its performance, he would have dug his feet in because that is one of the [ ] most ambiguous, one-sided agreements I have ever read. And I would not have ordered the enforcement of hardly any of the terms had I been asked to, even on the threat that,

okay the case is not settled.

I know we like to settle cases. But we don't want to settle cases and, in effect, prostrate the court system into making an order which is not fair or in the public interest."

54. Heedless of Judge Geernaert's comments the ORG on February 4, 1992 filed the underlying lawsuit, hereinafter Armstrong II, this time seeking $1,700,000.00 in damages. On March 26, 1992 the ORG sought to have ARMSTRONG held in contempt of court for communicating to the media about the litigation after the ORG had itself given an interview to the media and in response to the ORG's public comments about him. Judge Dufficy of the Marin Superior Court, then presiding over the Armstrong II litigation, refused to hear the ORG's effort to have ARMSTRONG found in contempt. The effort, however, demonstrates the ORG's intention: create a scenario in which ARMSTRONG responds to ORG attacks and then have him jailed for his response. Then, pursuant to ORG policy, neutralize him.

55. On February 19, 1992 Ford Greene, ARMSTRONG's attorney in Armstrong II, wrote ORG attorney Laurie Bartilson requesting that ARMSTRONG's former attorneys in Armstrong I, Michael Flynn, Julia Dragojevic and Bruce Bunch, each of whom were specifically prohibited by contract with the ORG from giving ARMSTRONG a declaration to assist him in his defense of the ORG's lawsuit to enforce the settlement agreement, be released from that prohibition so they could provide him with needed declarations. The ORG refused. On February 24, 1992 Greene wrote Bartilson requesting that the other individuals who had entered into

settlement agreements with the ORG, negotiated by the ORG with Flynn in 1986, and who were specifically prohibited from providing ARMSTRONG with a declaration to assist him in his defense of the ORG's lawsuit to enforce the settlement agreement, be released from that prohibition so they could provide him with needed declarations. Even though the ORG had used the fact of the other individuals' settlement agreements being substantially similar to the ARMSTRONG agreement, and cited to and relied on cases involving those individuals' settlements in its lawsuit against ARMSTRONG, the ORG refused to release them from their contract not to assist ARMSTRONG.

56. On May 27, 1992 at a hearing on a motion the ORG brought to obtain a preliminary injunction in this case, Los Angeles Superior Court Judge Sohigian stated:

> "The information that's being suppressed in this case, however, is information about extremely blameworthy behavior of the [ORG] which nobody owns; it is information having to do with the behavior of a high degree of offensiveness and behavior which is tortious in the extreme. It involved abusing people who are weak. It involves taking advantage of people who for one reason or another get themselves enmeshed in this extremist view in a way that makes them unable to resist it apparently. There appears to be in the history of [the ORG's] behavior a very, very substantial deviation between [the ORG's] conduct and standards of ordinary, courteous conduct and standards of ordinary honest behavior. They're just way off in a different

> firmament. [The ORG's] is the kind of behavior which makes you sort of be sure you cut the deck and be sure you've counted all the cards. If you're having a friendly poker game you'd make sure to count all the chips before you dealt any cards."

Despite these statements concerning the ORG and its practices, and despite the ORG's knowledge of similar rulings and judgments in Armstrong I, the case of Wollersheim v. Scientology, the case of Allard v. Scientology, the case in England Re B & G Wards, the cases of US v. Hubbard and US v. Kember, and of articles in the Los Angeles Times in 1990 and Time magazine in 1991, the ORG continues to attack ARMSTRONG and its other perceived enemies pursuant to its basic doctrine of Fair Game. The ORG's refusal to change its posture toward ARMSTRONG in the face of evidence of its nature causes ARMSTRONG severe emotional distress. Judge Sohigian denied the ORG's motion to enforce the settlement agreement in every aspect except for his right to provide testimony in anti-ORG litigation without being first subpoenaed to provide such testimony. The Sohigian ruling left ARMSTRONG free to speak and write freely about the ORG, to provide information to government agencies without the need for a subpoena and to continue to work as a paralegal.

57. ARMSTRONG has learned that MISCAVIGE possessed ARMSTRONG's original artwork and manuscript after they were stolen from ARMSTRONG's car in 1984. MISCAVIGE told Vicki Aznaran that he had ARMSTRONG's artwork and manuscript, and he described ARMSTRONG's works as weird poetry and letters to Hubbard. ORG lawyer John Peterson in 1984, in response to ARMSTRONG's demand at

that time for return of his works denied that the ORG possessed them. Now ARMSTRONG has the proof and he demands these works' return.

58. The ORG has, for over a decade, waged a campaign of hatred and psychological violence against ARMSTRONG. This campaign has been observed and condemned by courts and the media. In 1986 as an act of calculating Fair Game it used ARMSTRONG's lawyer, himself a long time target of Fair Game, to manipulate him into a settlement of his claims against the ORG which was intended to leave him lawyer-less and defenseless so that the ORG's Fair Game efforts against him could continue unopposed. In consummate cynicism the ORG claims its purpose in the settlement was to make peace. The ORG's acts against ARMSTRONG have affected every aspect of his life, taken from him the peace and seclusion he sought and threatened his health, livelihood, friendships and his very existence. These acts must stop.

FIRST CAUSE OF ACTION

(For Declaratory Relief Against All Defendants)

59. Cross-complainant ARMSTRONG realleges paragraphs 1 through 58, inclusive, and incorporates them by reference herein as though fully set forth.

60. An actual controversy has arisen and now exists between ARMSTRONG and CSI concerning their respective rights and duties in that ARMSTRONG contends that the only provisions of the settlement agreement that have any legal force any effect were those whereby he dismissed his cross-complaint in Armstrong I in consideration for a sum of money, and that paragraphs 4A, 4B, 7D, 7E, 7G, 7H, 7I, 10, 18D, 18E of the settlement agreement are void as against

public policy and should be severed therefrom, and that CSI and its agents are not entitled to breach the settlement agreement while requiring ARMSTRONG to adhere thereto, whereas CSI disputes this contention and contends that it is entitled to enforce all provisions of the settlement agreement against ARMSTRONG notwithstanding the lack of mutuality thereof.

61. ARMSTRONG desires a judicial determination of his rights and duties, and a declaration that the only provisions of the settlement agreement which are valid are those which directly pertain to the dismissal of his cross-complaint in Armstrong I in consideration for the payment of a sum of money, and that paragraphs 4A, 4B, 7D, 7E, 7G, 7H, 7I, 10, 18D, 18E of the settlement agreement should be severed and held not to be legally enforceable because they were designed to suppress evidence and obstruct justice.

62. A judicial declaration is necessary and appropriate at this time under the circumstances in order that ARMSTRONG may ascertain his rights and duties under the settlement agreement.

63. ARMSTRONG is being harmed by the settlement agreement insofar as his First Amendment Rights are curtailed, his ability to freely pursue gainful employment is restricted, and his reputation is being attacked in judicial proceedings which he is unable to counter without risking violation of the settlement agreement.

WHEREFORE, cross-complainant seeks relief as is hereinafter pleaded.

SECOND CAUSE OF ACTION

(For Abuse Of Process Against All Defendants)

64. Cross-complainant ARMSTRONG realleges paragraphs 1 through 58, inclusive, and incorporates them by reference herein as though fully set forth.

65. Defendants, and each of them, have abused the process of this court in a wrongful manner, not proper in the regular conduct of the proceedings in Armstrong I and in Armstrong II, and in other litigation, to accomplish a purpose for which said proceedings were not designed, specifically, the suppression of evidence, the obstruction of justice, the assassination of cross-complainant's reputation, and retaliation against said cross-complainant for prevailing at trial in Armstrong I, all so as to be able to attack cross-complainant and prevent cross-complainant from being able to take any effective action to protect himself.

66. Defendants, and each of them, acted with an ulterior motive to suppress evidence, obstruct justice, assassinate cross-complainant's reputation, and to retaliate against cross-complainant in said litigations.

67. That defendants, and each of them, have committed willful acts of intimidation, threats, and submission of false and confidential documents not authorized by the process of litigation, and not proper in the regular conduct of litigation.

68. Cross-complainant has suffered damage, loss and harm, including but not limited to his reputation, his emotional tranquillity, and privacy.

69. That said damage, loss and harm was the proximate and legal result of the use of such legal process.

WHEREFORE, cross-complainant seeks relief as is hereinafter pleaded.

THIRD CAUSE OF ACTION

(Breach of Contract)

70. Cross-complainant ARMSTRONG realleges paragraphs 1 through 58, inclusive, and incorporates them by reference herein as though fully set forth.

71. CSI, and/or its agents, and/or other Scientology-related entities having engaged in on-going breaches of said settlement agreement by making reference to ARMSTRONG (a) in communications to the press, (b) in filing pleadings and declarations in various litigations.

72. By reason of said breaches of the settlement agreement, ARMSTRONG has been damaged in an amount not presently known but believed to be in excess of the jurisdiction minimum of this Court.

WHEREFORE, plaintiff prays for judgment as follows:

ON THE FIRST CAUSE OF ACTION

1. For a declaration paragraphs 4A, 4B, 7D, 7E, 7G, 7H, 7I, 10, 18D, 18E of the settlement agreement should be severed from the settlement agreement and found to be of no legal force or effect.

2. For damages according to proof.

3. For attorney's fees and costs of suit.

ON THE SECOND CAUSE OF ACTION

1. For general and compensatory damages according to proof.

2. For attorney's fees and costs of suit.

ON THE THIRD CAUSE OF ACTION

1. For compensatory and consequential damages according to proof.

2. For attorney's fees and costs of suit.

ON ALL CAUSES OF ACTION

1. For such other and further relief as the Court may deem just and proper.

Respectfully submitted,

DATED: October 7, 1992

HUB LAW OFFICES

By:
FORD GREENE
Attorney for Defendant

PROOF OF SERVICE

I am employed in the County of Marin, State of California. I am over the age of eighteen years and am not a party to the above entitled action. My business address is 711 Sir Francis Drake Boulevard, San Anselmo, California. I served the following documents: CROSS-COMPLAINT FOR DECLARATORY RELIEF, ABUSE OF PROCESS AND BREACH OF CONTRACT

on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California:

Andrew Wilson, Esquire
WILSON, RYAN & CAMPILONGO
235 Montgomery Street, Suite 450
San Francisco, California 94104

LAURIE J. BARTILSON, ESQ.
Bowles & Moxon
6255 Sunset Boulevard
Suite 2000
Los Angeles, California 90028

PAUL MORANTZ, ESQ.
P.O. Box 511
Pacific Palisades, CA 90272

[x] (By Mail) I caused such envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California.

[x] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

DATED: October 7, 1992

VERIFICATION

I, the undersigned, am an officer of defendant The Gerald Armstrong Corporation in the above entitled action. I know the contents of the foregoing Amended Cross-Complaint I certify that the same is true of my own knowledge, except as to the matters which are therein stated upon my information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct according to the laws of the State of California and that this declaration was executed on the October 7, 1992 at San Anselmo, California.

By: ______________________
GERALD ARMSTRONG

PROOF OF SERVICE

I am employed in the County of Marin, State of California. I am over the age of eighteen years and am not a party to the above entitled action. My business address is 711 Sir Francis Drake Boulevard, San Anselmo, California. I served the following documents: VERIFIED AMENDED CROSS-COMPLAINT FOR DECLARATORY RELIEF, ABUSE OF PROCESS AND BREACH OF CONTRACT

on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California:

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San Francisco, California 94104

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Bowles & Moxon
6255 Sunset Boulevard
Suite 2000
Los Angeles, California 90028

PAUL MORANTZ, ESQ.
P.O. Box 511
Pacific Palisades, CA 90272

[x] (By Mail) I caused such envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California.

[x] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

DATED: October 7, 1992

RP

Andrew H. Wilson
WILSON, RYAN & CAMPILONGO
235 Montgomery Street
Suite 450
San Francisco, California 94104
(415) 391-3900

Laurie J. Bartilson
BOWLES & MOXON
6255 Sunset Boulevard
Suite 2000
Hollywood, California 90028
(213) 661-4030

Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY INTERNATIONAL

FILED
LOS ANGELES SUPERIOR COURT
OCT 20 1992
JAMES H. DEMPSEY, CLERK
E. Dill
BY E. DILL, DEPUTY

FIL
NOV 16 1994
HOWARD HANS
MARIN COUN

157680

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

CHURCH OF SCIENTOLOGY OF INTERNATIONAL, a California not-for-profit religious corporation;

Plaintiff,

vs.

GERALD ARMSTRONG and DOES 1 through 25, inclusive,

Defendants.

Case No. BC 052395

NOTICE OF HEARING ON DEMURRER BY CHURCH OF SCIENTOLOGY INTERNATIONAL TO AMENDED ANSWER OF GERALD ARMSTRONG

HEARING: Nov. 30, 1992
DEPT: 30
DISC. CUTOFF: None
TRIAL DATE: None
motion cutoff: None

TO EACH PARTY AND ATTORNEY OF RECORD IN THIS ACTION:

PLEASE TAKE NOTICE THAT the demurrer filed herewith has been set for hearing on November 30, 1992, at 8:30 a.m. or as soon thereafter as counsel can be heard in Dept. 30 of this Court at

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///

///

the Los Angeles Superior Court, 111 N. Hill Street, Room ___, Los Angeles, California.

DATED: October 20, 1992

BOWLES & MOXON

By: Laurie J. Bartilson
Laurie J. Bartilson
Attorneys for Plaintiff,
CHURCH OF SCIENTOLOGY
INTERNATIONAL

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Blvd., Suite 2000, Hollywood, CA 90028.

On October 20, 1992, I served the foregoing document described as NOTICE OF HEARING ON DEMURRER BY CHURCH OF SCIENTOLOGY INTERNATIONAL TO AMENDED ANSWER OF GERALD ARMSTRONG on interested parties in this action as follows:

[ ] by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

[X] by placing [ ] the original [X] a true copy thereof in a sealed envelope addressed as follows:

Paul Morantz **BY U.S. MAIL**
P.O. Box 511
Pacific Palisades, CA 90272

Ford Greene **BY U.S. MAIL**
Hub Law Offices
711 Sir Francis Drake Boulevard
San Anselmo, CA 9490-1949

[x] BY MAIL

[ ] *I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

[x] As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an

affidavit.

Executed on October 20, 1992, at Los Angeles, California.

[ ] **(BY PERSONAL SERVICE) I delivered such envelopes by hand to the offices of the addressee.

Executed on ________________, at Los Angeles, California.

[X] (State) I declare under penalty of the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Paul BradFord ______________ Paul Bradford ______________
Signature

* (By Mail, signature must be of person depositing envelope in mail slot, box or bag)

** (For personal service signature must be that of messenger)

P.R.

338

Andrew H. Wilson
WILSON, RYAN & CAMPILONGO
235 Montgomery Street
Suite 450
San Francisco, California 94104
(415) 391-3900

Laurie J. Bartilson
BOWLES & MOXON
6255 Sunset Boulevard
Suite 2000
Hollywood, California 90028
(213) 661-4030

Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY INTERNATIONAL

FILED
LOS ANGELES SUPERIOR COURT
OCT 2 . 1992
JAMES H. DEMPSEY, CLERK
E. Dill
BY E. DILL, DEPUTY

FIL
NOV 16 1994
HOWARD HANS
MARIN COUN

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

CHURCH OF SCIENTOLOGY OF INTERNATIONAL, a California not-for-profit religious corporation; Plaintiff, vs. GERALD ARMSTRONG and DOES 1 through 25, inclusive, Defendants.	Case No. BC 052395 157680 DEMURRER HEARING: Nov. 30, 1992 DEPT: 30 DISC. CUTOFF: None TRIAL DATE: None

INTRODUCTION

Plaintiff in this case, Church of Scientology International ("CSI"), has brought a straightforward claim for breach of contract based on defendant Gerald Armstrong's many and varied breaches of an agreement pursuant to which he received a sizable sum of money. In answer to these breach of contract claims, Armstrong has apparently taken the position that the best defense is a good offense, and pursuant to this viewpoint he has asserted a panoply of irrelevancies and supposed facts that, even if they were true (which they are not), would have no bearing on the breach of contract claims in this case.

Armstrong raises equitable defenses when equitable relief has already been granted by the court in the form of a preliminary injunction. He raises constitutional defenses that cannot serve as a defense to the breach of contract claims under the most sweeping interpretation of constitutional provisions, and he raises defenses that might ordinarily be asserted in a breach on contract case but that have no place under the facts of this case.

STATEMENT OF FACTS

Plaintiff brought these breach of contract claims and request for injunctive relief on February 4, 1992, after an extended period of observing Armstrong blatantly fail to observe the provisions of the contract entered into by the parties on December 6, 1986. Although the contract was designed to resolve and settle all claims and controversies between these parties, Armstrong began almost immediately to act in total disregard of the provisions of the agreement. As Armstrong acknowledges in his answer, he had no real intention of honoring the terms of the agreement. See Defendant's Amended Answer at p. 28 ¶ 86. He signed the agreement and, under its provisions, took plaintiff's money only because he believed the agreement could not be enforced against him. Id.

On May 28, 1992, the court granted plaintiff's request for preliminary injunction, ordering that:

Defendant Gerald Armstrong, his agents, and persons acting in concert or conspiracy with him (excluding attorneys at law who are not said defendant's agents or retained by him) are restrained and enjoined during the pendency of this suit pending further order of court from doing directly or indirectly any of the following:

> Voluntarily assisting any person (not a governmental organ or entity) intending to make, intending to press, intending to arbitrate, or intending to litigate a claim against the persons referred to in sec. 1 of the "Mutual Release of All Claims and Settlement Agreement" of December, 1986 regarding such claim or regarding pressing, arbitrating, or litigating it.
>
> Voluntarily assisting any person (not a governmental organ or entity) arbitrating or litigating a claim against the persons referred to in sec. 1 of the "Mutual Release of All Claims and Settlement Agreement" of December, 1986.

On July 23, 1992, Armstrong filed a notice of appeal of the court's ruling.

Now in an effort to continue to avoid the terms to which he agreed, Armstrong makes a series of allegations that serve no purpose in this lawsuit except to attempt to create bias against the plaintiff. On these allegations he bases the bulk of his defense which, standing alone, clearly have no merit.

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DISCUSSION

A. Defendant's Equitable Defenses are not Applicable to the Breach of Contract Claims.

Defendant raises equitable defenses in his third, seventh, and thirteenth affirmative defenses. His claims of laches, unclean hands, and estoppel are not appropriate defenses to a breach of contract claim when equitable relief has already been reviewed and granted by the court.

Defendant in his thirty-second and thirty third defenses also raises claims of collateral estoppel and res judicata even though nowhere in the pleadings are there any facts showing that the issues in this case have been previously determined or ruled upon so as to affect any of the parties here. All of these defenses fail to demonstrate any facts on which such defenses could be based.

B. Defendant's Constitutional Defenses Have No Merit.

Defendant's thirty-ninth, fortieth, and forty-first affirmative defenses are based on due process, equal protection, and right to counsel. His twenty-fifth through twenty-ninth defenses are supposedly based on First Amendment and right to privacy claims. Even if there were facts alleged which showed the agreement here removed the constitutional rights of defendant, the existence of such facts does not give rise to a defense to breach of contract. A person is entitled to contract away or to waive his constitutional rights. A party may relinquish such constitutional rights, particularly where the party agrees to receive payment in exchange for such relinquishment. Matter of New York Lackawanna v. Western R.R.

Co., 98 N.Y. 447, 453. The facts alleged in this case show such a waiver if constitutional rights had indeed been infringed.

C. Defendant's Defenses Based on Breach of Contract Ignore the Law.

Armstrong asserts as his ninth affirmative defense the defense of mistake of law. He claims his counsel mistakenly informed him that the provisions of the agreement that he signed were unenforceable. A mistake of law arises, however, only when there is a misapprehension of the law by all parties and all made substantially the same mistake or where there was a mistake of law by one party of which the others were aware but failed to rectify the mistake. 1 Witkin, Summary of California Law, Contracts, Section 377, p. 344 (9th ed. 1987). Here there is not even one fact showing that all parties suffered from a misapprehension of the law nor that the law was in fact misapprehended. The opinions of plaintiff's counsel do not play a role in whether the law in fact was violated. In addition there is certainly no fact demonstrating that plaintiff was aware of a mistake of law or was aware that defendant thought the law prevented enforcement of the contract.

In his sixth affirmative defense Armstrong claims fraud and deceit and alleges that plaintiff made fraudulent misrepresentations to him in order to induce him to enter the settlement agreement. There are no facts showing fraud in the inception under Civil Code Section 1566. Thus, defendant's assertion of fraud merely gives him the right to rescind the contract under the provisions of Civil Code Section 1689. To rescind Armstrong must give prompt notice to plaintiff and offer to restore the consideration received. There are no allegations or facts pled showing that an offer of rescission has been made, and Armstrong cannot use the fraud defense to avoid the breach of contract claims without complying with rescission provisions. See 1 Witkin, supra, at Section 403, p. 363.

Armstrong asserts a twelfth affirmative defense of duress and undue influence. Civil Code Section 1569 defines duress as unlawful or fraudulent confinement. The facts here show no such confinement, but even if they did, Armstrong's remedy would lie simply in voiding the contract under the same conditions specified for rescission based on fraud in the inducement. Id. at 417, p. 374. Here there are no allegations that Armstrong was physically compelled to sign the agreement. To the contrary, he himself alleges he signed it on the mistaken advice of counsel. Thus, he has no claim the contract is void for duress or undue influence.

Armstrong also asserts a potpourri of defenses based on contract, such as illegality, frustration of purpose, lack of mutuality, impossibility of performance, lack of consideration, adhesion, unconscionability, hardship, and unreasonableness. The facts alleged, however, show no illegal consideration and completely fail to demonstrate that the object of the contract was unlawful. Id. at Section 429, p. 386. Likewise the facts show explicitly that the settlement agreement could not have been a contract of adhesion since Armstrong admits that he consulted with counsel and bargained for terms of the agreement, including a large amount of consideration. The facts also clearly demonstrate that the agreement here was not standardized in such a way as to deprive Armstrong of bargaining power. See 1 Witkin, supra, at Sections 23, 24, pp. 53, 54.

Armstrong's remaining contractual defenses fail to meet the requirements for such defenses. Id. at Sections 772, 787, 503, and 462.

CONCLUSION

For all of the foregoing reasons demurrer should be sustained to Armstrong's untenable affirmative defenses.

DATED: October 20, 1992

BOWLES & MOXON

By: Laurie J. Bartilson
Laurie J. Bartilson
Attorneys for Plaintiff,
CHURCH OF SCIENTOLOGY INTERNATIONAL

H:\ARMSTRON\DMR

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Blvd., Suite 2000, Hollywood, CA 90028.

On October 20, 1992, I served the foregoing document described as DEMURRER on interested parties in this action as follows:

[ ] by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

[X] by placing [ ] the original [X] a true copy thereof in a sealed envelope addressed as follows:

Paul Morantz **BY U.S. MAIL**
P.O. Box 511
Pacific Palisades, CA 90272

Ford Greene **BY U.S. MAIL**
Hub Law Offices
711 Sir Francis Drake Boulevard
San Anselmo, CA 9490-1949

[x] BY MAIL

[ ] *I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

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Paul Bradford

Signature

* (By Mail, signature must be of person depositing envelope in mail slot, box or bag)

** (For personal service signature must be that of messenger)

HUB LAW OFFICES
Ford Greene, Esquire
California State Bar No. 107601
711 Sir Francis Drake Boulevard
San Anselmo, California 94960-1949
Telephone: (415) 258-0360

PAUL MORANTZ, ESQ.
P.O. Box 511
Pacific Palisades, CA 90272
(213) 459-4745

Attorney for Defendant
GERALD ARMSTRONG

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S Robles
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HOWARD HANS
MARIN COUNTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation; Plaintiffs, vs. GERALD ARMSTRONG; DOES 1 through 25, inclusive, Defendants.	No. **BC 052395** 157680 **DEFENDANTS' OPPOSITION TO PLAINTIFF'S DEMURRER TO AMENDED ANSWER** DATE: November 30, 1992 TIME: 8:30 a.m. DEPT: 30
AND RELATED CROSS-COMPLAINT	NO TRIAL DATE NO DISCOVERY CUT OFF NO MOTION CUT OFF

ORIGINAL

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HUB LAW OFFICES
Ford Greene, Esquire
California State Bar No. 107601
711 Sir Francis Drake Boulevard
San Anselmo, California 94960-1949
Telephone: (415) 258-0360

PAUL MORANTZ, ESQ.
P.O. Box 511
Pacific Palisades, CA 90272
(213) 459-4745

Attorney for Defendant
GERALD ARMSTRONG

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation;

Plaintiffs,

vs.

GERALD ARMSTRONG; DOES 1 through 25, inclusive,

Defendants.

No. **BC 052395**

DEFENDANTS' OPPOSITION TO PLAINTIFF'S DEMURRER TO AMENDED ANSWER

Date: November 30, 1992
Time: 8:30 a.m.
Dept: 30

I. SCIENTOLOGY FAILS TO ABIDE BY LOCAL RULE ¶ 181

On or about August 26, 1992 Scientology moved to strike substantial portions of defendants' Answer, including pages of factual allegations in support thereof. That first attack on the pleading did not include a demurrer. Now, after defendants have amended their Answer, Scientology brings this Demurrer. At first Scientology objected to Armstrong's Answer because it contained too many facts, and now it complains there are not enough. By taking opposite positions regarding the sufficiency of facts pleaded in the answer Scientology demonstrates why this Court has a rule requiring demurrers and motions to strike to be filed together. Should the Court grant the demurrer, not only would defendants have to amend their answer a needless second time, but Scientology would be rewarded with its rule violation with one of its litigation goals: to confuse courts and confound the orderly administration of justice.

Local Rule ¶ 181 states "[w]henever there are grounds for both a demurrer and a motion to strike, both must be served and filed at the same time and calendared for the same date." Accord: Weil and Brown, Civil Procedure Before Trial (1991 Rutter Group), § 7:163 at 7-42.1.

A quick review of defendants' original answer and amended answer shows that the defenses alleged in both pleadings are essentially identical. At the time that Scientology first attacked the answer by its motion to strike, it knew or should have known that it would demur. Instead of abiding by the Local Rule 181, however, Scientology is proceeding to litigate in the piecemeal, successive manner that the Rule was designed to prevent. Since Scientology failed to comply with Local Rule ¶ 181 by not bringing the instant Demurrer in conjunction with its first-filed Motion to Strike, its right to demur was eliminated.

II. THE DEMURRER FAILS ON THE MERITS

Assuming without conceding that the Court will proceed to the merits of the improperly brought demurrer, the grounds asserted disregard the facts which have been pleaded and the law applicable thereto.

A. Defense Of Illegality

Armstrong's fifth affirmative defense is based upon the contract being illegal. In support thereof, Armstrong has pleaded that

(1) He was one of more than 2 dozen people who were represented by Michael J. Flynn, who pressured many of them in the December 1986 "global settlement" into signing false affidavits and secret agreements with Scientology which were designed to

further its notorious Fair Game Policy [1] by suppressing evidence and obstructing justice to prevent its victims from obtaining civil or criminal redress. (AA at 5:15-28; 21:1-14, 24:19-25:24, 29:4-9);

(2) The agreement's goals included a collusive reversal of Judge Breckenridge's decision in Church of Scientology of California v. Armstrong, LASC No. C 420153 ("Armstrong I") either by stipulation or by causing Armstrong to take a dive on appeal (AA at 24:19-25), and, by obtaining possession of the so-called MCCS tapes, the cover-up of Scientology's misconduct in employing attorneys for the purpose of committing future crimes and frauds; [2]

---

[1] Said Fair Game Policy states that any enemy of Scientology "[m]ay be deprived of property or injured by any means by any Scientologist without any discipline of the Scientologist. May be tricked, sued or lied to or destroyed." (Amended Answer ["AA"] at 25:1-6)

[2] The MCCS Project gave rise to substantial litigation regarding the crime-fraud exception to the attorney-client privilege. In United States v. Zolin (1989) 109 S.Ct. 2619, the Court addressed whether the attorney-client privilege between Scientology and some of its attorneys should be abrogated on the basis "that the legal service was sought or obtained in order to enable or aid the client to commit or plan to commit a crime or tort." Id. at 2630. In Zolin, the Supreme Court reversed the Ninth Circuit's ruling in United States v. Zolin (9th Cir. 1987) 809 F.2d 1411 that the Government had not made a sufficient showing that there had been "illegal advice ... given by [Scientology] attorneys to [Scientology] officials" to invoke the crime-fraud exception to the attorney-client privilege. Upon reversing and remanding, the Supreme Court ordered the Ninth Circuit to review partial transcripts of the tape recording sought by the IRS in a criminal investigation of Scientology to determine whether the crime-fraud exception to the privilege applied. On remand, the Court held:

> "The partial transcripts demonstrate that the purpose of the [Mission Corporate Category Sort Out] project was to cover up past criminal wrongdoing. The MCCS project involved the discussion and planning for future frauds against the IRS, in violation of 18 U.S.C. § 371. [citation.] The figures involved in MCCS admit on the tapes that they are attempting to confuse and defraud the U.S. Government. The purpose of the crime-fraud exception is to exclude such transactions from the protection of the attorney-client privilege."

(continued...)

(3) In order to accomplish the foregoing Scientology and Flynn entered into at least two separate secret agreements. In one Flynn promised not to engage in any further litigation adverse to Scientology. Then another secret agreement was for indemnification regarding the resolution of the retrial of Armstrong I were plaintiff and other Scientology-related entities successful in obtaining reversal of Judge Breckenridge's decision on appeal. Scientology promised to limit its collections of damages to $25,001.00 and to indemnify Flynn for the payment thereof and Flynn, in turn, would indemnify Armstrong for any such judgment. The existence of these secret, side agreements were never disclosed to Armstrong by Flynn, plaintiff, or other Scientology-related entities. (AA at 21:15-27)

(4) Flynn was coerced by Scientology into acting as Scientology's agent because of Scientology's practice of Fair Game on him. (AA at 28:19-27) [3]

As discussed above, the Scientology Organization set out to engineer the reversal of Judge Breckenridge's written decision in Armstrong I. Paragraphs 4A and 4B of the December 6, 1986 agreement exempt from the settlement's scope the resolution of Scientology's appeal (No. B005912) from the Breckenridge Decision. In consideration for Scientology's payment of money, Armstrong was to "waive" his rights to fight its appeal. Thus, the Scientology Organization purchased Armstrong's default in Appeal No. B005912. At that point, the litigation of the appeal became collusive by compliance with the terms set forth in ¶¶ 4A and 4B of the settlement agreement, and because Armstrong's lawyers had entered into contracts not to respond to the appeal or defend Armstrong.

The consideration of a contract must be lawful. Civil Code

---

[2](...continued)

United States v. Zolin (9th Cir. 1990) 905 F.2d 1344, 1345. cert. denied, Church of Scientology v. United States (1991) 111 S.Ct. 1309.

[3] For details, see United States v. Kattar (1st Cir.1988) 840 F.2d 118, 125 (detailing some of Scientology's Fair Game activities against Michael Flynn)

section 1607. If any part of the consideration is unlawful the entire contract is void. Civil Code section 1608. Consideration is unlawful if it is contrary to an express provision of law, contrary to the policy of express law, though not expressly prohibited, or otherwise contrary to good morals. Civil Code section 1667. The object of the contract is the thing which it is agreed, on the party receiving the consideration, to do or not to do. Civil Code section 1595. The object must be lawful when the contract is made. Civil Code section 1596. Whether or not a contract in a given case is contrary to public policy is a question of law to be determined from the circumstances of each particular case. Bovard v. American Horse Enterprises (1988) 201 Cal.App.3d 832, 838, 247 CR 340; Kallen v. Delug (1984) 157 Cal.App.3d 940, 951, 203 CR 879; Russell v. Soldinger (1976) 59 Cal.App.3d 633, 642, 131 CR 145.

It is a fundamental rule of construction of contracts that all applicable laws in existence when an agreement is made, which laws the parties are presumed to know and have in mind, necessarily enter into the contract and form a part of it without any stipulation to that effect, as if they were expressly referred to and incorporated in the agreement. People v. Hadley (1967) 257 Cal.App.2d Supp. 871, 881.

"Agreements to suppress evidence have long been held void as against public policy, both in California and in most common law jurisdictions." Williamson v. Superior Court (1978) 21 Cal.3d 829, 836-37. In Brown v. Freese (1938) 28 Cal.App.2d 608, the California Court of Appeal adopted section 557 of the Restatement of the Law of Contracts prohibiting as illegal those agreements which sought to suppress the disclosure of discreditable facts. The court stated:

> A bargain that has for its consideration the nondisclosure of discreditable facts . . . . is illegal. . . In many cases falling within the rule stated in the section is that the bargain is illegal whether or not the threats go so far as to bring the case within the definition of duress. In some cases, moreover, disclosure may be proper or even a duty, and the offer to pay for nondisclosure may be voluntarily made. Nevertheless the bargain is illegal. Moreover, even **though the offer to pay for nondisclosure is voluntarily made and though there is not a duty to make disclosure or propriety in**

> **doing so, a bargain to pay for nondisclosure is illegal.** [Emphasis added.]

Brown 28 Cal.App.2d at 618.

> The nondisclosure was not a minor or indirect part of the contract, but a major and substantial consideration of the agreement. A bargain which includes as part of its consideration nondisclosure of discreditable facts is illegal. (See Brown v. Freese, 28 Cal.App.2d 608, 618 [83 P.2d 82.].) It has long been hornbook law that consideration which is void for illegality is no consideration at all. [Citation.]

Allen v. Jordanos' Inc. (1975) 52 Cal.App.3d 160, 166, 125 Cal.Rptr. 31

The object of a contract must be lawful. Civil Code sections 1550, 1596. If the contract has a single object, and that object is unlawful, the entire contract is void. Civil Code section 1598.

Civil Code § 1668 states:

> All contracts which have for their object, directly or indirectly, to exempt anyone from responsibility for his own fraud, or willful injury to the person or property of another, or violation of law, whether willful or negligent, are against the policy of the law.

Since an agreement to suppress evidence or to conceal a witness is illegal, Witkin, § 611 at 550. Penal Code §§ 136, 136.1, and 138; Mary R. v. B. & R. Corp. (1983) 149 Cal.App.3d 308, 196 Cal.Rptr. 871; Tappan v. Albany Brewing Co. (1889) 80 Cal. 570, 571-572, and the combined effect of the "global settlement" has been to remove the availability as witnesses of most former high-ranking Scientologists, such can "lead to subtle but deliberate attempts to suppress relevant evidence." Williamson, 21 Cal.3d at 838.

Finally, the elimination of the independence of Armstrong's counsel and turning said counsel's advocacy in Scientology's favor eliminated Armstrong's bargaining power. Said agreements are standardized inasmuch as they have been employed in approximately 30 different instances in order to bury the fruits of discovery in civil litigation. (AA at 21:11-14, 29:4-9)

B. Defense Of Fraud And Deceit

Armstrong has satisfactorily pleaded his sixth affirmative defense of fraud and deceit by pleading the elements of fraud, inter alia, as follows:

> Plaintiff is barred from bringing this action against these defendants, and each of them, because of its fraud and deceit in representing to defendants, and each of them, that its management had changed and no longer would engage in illegal activities, that it wanted to buy peace, that it would leave defendants, and each of them alone, and that the false affidavit that it required Armstrong to sign as a condition of the settlement would be disclosed only if Armstrong attacked the ORG. Plaintiff made the foregoing representations to defendants, and each of them, with knowledge of the falsity thereof at the time said representations were made and with the intent to deceive defendants, and each of them, who actually and justifiably relied on those material misrepresentations to their injury by signing the settlement agreement. In fact, plaintiff and other Scientology-related organizations, entities and individuals never intended to cease their illegal and immoral activities, never intended to buy peace with defendants, and each of them, never intended to leave Armstrong alone, never intended not to use the false declaration only if Armstrong attacked the ORG, and never intended to abide by the terms of the settlement agreement. Rather plaintiff and other Scientology-related entities intended to use the settlement agreement as a tool for the implementation of the Fair Game Policy and Scientology's litigation tactics so as to engineer a reversal of Judge Breckenridge's decision in Armstrong I, to collusively resolve any re-trial of Armstrong I, to obtain possession of the so-called MCCS tapes which were evidence of Scientology employing attorneys for the purpose of committing future crimes and frauds, to use the false declaration in other litigation without regard to Armstrong's conduct, and to otherwise obstruct justice and suppress evidence of facts which discredited plaintiff and other Scientology-related entities.

(AA at 23:27-25:1)

Since consent to a contract must be free, Civil Code § 1565 (1), apparent consent obtained by fraud is not. Civil Code § 1567 (3). Thus, Armstrong has pleaded an effective defense. Since Flynn represented to Armstrong that the provisions he found onerous and which Scientology herein seeks to enforce were not enforceable (AA at 3:3-23; 6:17-20; 27:27-5; 28:16-22), "Armstrong was deceived as to the nature of his act" and the contract "may be disregarded without the necessity of recision." 1 Witkin, Summary of California Law, Contracts (9th Ed. 1987), § 405, at 364 and cases cited therein.

C. Defenses Of Laches, Unclean Hands And Estoppel

Scientology contends that because it has obtained equitable relief in the form of a preliminary injunction in this case, that the equitable defenses of unclean hands (third affirmative defense), estoppel (seventh) and laches (thirteen) "are not appropriate defenses to a breach of contract claim when equitable relief has already been reviewed and granted by the court." (Demurrer at 4:4-8) This silly claim should be disregarded as it is supported neither by judicial or legislative authority nor common sense. Whether Scientology's preliminary injunction will become permanent is still to be litigated. Indeed, the Sohigian ruling granted a preliminary injunction only on the narrow aspect of un-subpoenaed assistance to adverse litigants. It specifically does not enjoin defendant from any of the other acts barred by the settlement agreement which Scientology is trying to have this Court enforce.

Moreover, all of the allegations pleaded in connection with the defenses of illegality and fraud are incorporated in the third affirmative defense of unclean hands. (AA at 19:20-27)

Armstrong has pleaded further facts regarding the seventh affirmative defense of estoppel inasmuch as Scientology has repeatedly violated the provision of the settlement agreement that it seeks to enforce. (AA at 9:3-8; 11:6-10; 26:14-26) The same facts support the eighth affirmative defense of waiver. (AA at 27:6-16)

D. Armstrong's Mistake Defenses Are Adequately Pleaded

In his ninth affirmative defense Armstrong asserts a mistake of law. A mistake of law constitutes a mistake when it arises from a "misapprehension of the law by one party, of which the others are not aware at the time of contracting, but they do not rectify." Civil Code section 1578 (2) In support of this defense Armstrong has asserted, inter alia, that Scientology compromised his attorney who advised him that the provisions of the agreement seeking to silence him regarding all matters relating to Scientology were unenforceable. (AA at 3:3-23; 6:17-20; 27:27-5; 28:16-22) Since Scientology had compromised Flynn, he was acting as Scientology's agent. Scientology was apparently aware that "[a] person is entitled to contract away or to waive his constitutional rights" guaranteed by the First Amendment. (Demurrer at 4:24-25) Since Scientology set up Armstrong's misapprehension and took advantage thereof, 1 Witkin, Summary of California Law, Contracts (9th Ed. 1987), § 379, at 345 and cases cited therein, he may set up the defense of mistake of law. Moreover, an attorney's misstatement of the law will set up a good defense of mistake of law. Estate of Peterson (1968) 259 Cal.App.2d 492, 500-01, 66 CR 629. The same facts which support the mistake of law defense also support the tenth affirmative defense of mistake of fact. Civil Code section 1577 (2).

E. Twelfth Affirmative Defense of Undue Influence

Armstrong's twelfth affirmative defense is undue influence which vitiates free consent. Civil Code § 1567 (4). Undue influence consists of taking undue and grossly oppressive and unfair advantage of another's necessities or distress. Civil Code § 1575 (3). In support of this defense and in addition to the other facts he previously set forth and incorporated, Armstrong alleged:

> Plaintiff is barred from bringing this action against these defendants, and each of them, because plaintiff and other Scientology-related organizations, entities and individuals had implemented Fair Game Policy stratagems on defendant Armstrong's attorney, Michael J. Flynn and upon other anti-Scientology litigants and would continue such conduct against all such persons unless all said anti-Scientology litigants, including Flynn, signed settlement agreements substantially similar to that signed by defendant Armstrong.

(AA at 29:18-27)

For judicial recognition of Fair Game Policy, see, Allard v. Church of Scientology of California (1976) 58 Cal.App.3d 439, 443, fn. 1; Church of Scientology of California v. Armstrong (1991) 232 Cal.App.3d 1060, 1067 [defendant herein subjected to Fair Game Policy]; Wollersheim v. Scientology (1989) 212 Cal.App.3d 872, 880, 888, pet. for cert. granted, vacated and remanded on other grounds, 111 S.Ct. 1298 (1991) [4]

For Scientology to have subjected Armstrong and his attorney to the Fair Game policy, and then to have compromised his attorney with large sums of money to act against the interests of his own client takes grossly oppressive and unfair advantage of the very distress which, in the first place, Scientology created.

Further,

> in early December 1986, attorney Flynn and other anti-Scientology litigants, postured Armstrong as a deal breaker, by stating that their desires to settle would be ruined unless defendant Armstrong agreed to settle and led him to believe if he did not sign the agreement, they would not cooperate in such event by acting as Armstrong's witnesses and zealous advocate on the trial of his cross-complaint against Scientology set to commence shortly thereafter in Armstrong I.

(AA at 29:28-30:14)

Armstrong has alleged sufficient facts to support the affirmative defense of undue influence.

F. The Constitutional Defenses Are Meritorious

It is without question that the enforcement of the settlement agreement implicates Armstrong's First Amendment rights to religion, speech, press and association and Ninth Amendment right to privacy. Since the purpose of the agreement is the suppression of evidence regarding Scientology's criminal and civil wrongdoing, litigants adverse to Scientology are deprived of their due process right to a fair trial (thirty-ninth affirmative defense). This in turn is a violation of equal protection (fortieth affirmative defense) because it creates two classes of litigants based on wealth. Those litigants who can afford to take depositions and pay legal fees to litigate through Scientology's obstructive motions for protective orders and instructions not to answer questions then requiring motions to compel will obtain the evidence needed to support their claims against Scientology. All others unable to pay such expenses will be deprived of such evidence and not receive fair trials. Since Scientology commonly leaves its victims impoverished, few, if any, can battle it legally. Such tactics, of which the settlement agreement at issue is an integral part, also adversely impact the right to counsel of Scientology's victims (forty-first affirmative defense) because most lawyers are not willing to fight in Scientology-style litigation where they have to pay dearly in order to obtain evidence, and where they must begin against the behemoth on a wildly tilted playing field.

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[4] See also United States v. Kattar (1st Cir.1988) 840 F.2d 118, 125 (detailing some of Scientology's Fair Game activities against Michael Flynn); Van Schaick v. Church of Scientology (U.S.D.C. Mass.1982) 535 F.Supp. 1125, 1131 n.4; Christoffersen v. Church of Scientology (1982) 57 Ore.App. 203, 644 P.2d 577, 590-92; Church of Scientology v. Commissioner of Internal Revenue (1984) 83 T.C. 381, 411-12, aff'd, 823 F.2d 1310 (9th Cir. 1987).

Since enforcement of the settlement agreement would deprive Armstrong of the right to associate with persons and organizations dedicated to exposing Scientology for the criminal organization that it is now and has always been, it violates his right to free speech (twenty-sixth affirmative defense), free association (twenty-eighth affirmative defense) and press (twenty-seventh affirmative defense).

The United States Supreme Court has stated that "Prior restraints on speech and publication are the least tolerable infringement on First Amendment rights." Nebraska Press Association v. Stuart (1976) 427 U.S. 539, 559. Thus, "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." Elrod v. Burns (1976) 427 U.S. 347, 373-74, 49 L.Ed.2d 547; C.B.S., Inc. v. U.S. District Court (9th Cir. 1984) 729 F.2d 1174, 1177. "Under our constitutional system prior restraints, if permissible at all, are permissible only in the most extraordinary of circumstances." Id, 729 F.2d at 1183. Therefore, prior restraint on expression comes with a "heavy presumption" against constitutional validity. Organization For A Better Austin v. Keefe (1971) 402 U.S. 415, 419.

> Even where individuals have entered into express agreements not to disclose certain information, either by consent agreement [citation]; or by an employment contract and secrecy oath [citation], the courts have held that judicial orders enforcing such agreements are prior restraints implicating First Amendment rights.

In Re Halkin (D.C. Cir. 1979) 598 F.2d 176, 190.

The First Amendment values at issue are not limited to Armstrong. They include the American public as well.

> The freedom of speech and of the press, which are secured by the First Amendment against abridgment by the United States, are among the personal rights and liberties which are secured to all persons by the Fourteenth Amendment by a state. [¶] The safeguarding of these rights to the ends that men may speak as they think on matters vital to them and that falsehoods may be exposed through the process of education and discussion is essential to free government. Those who won our independence had confidence in the power of free and fearless reasoning and communication of ideas to discover and spread political and economic truth. Noxious doctrines in those fields may be refuted and their evil averted by the courageous exercise of the right of free discussion. Abridgment of freedom of speech and of the press, however, impairs those opportunities for public education that are essential to the power of correcting error through the processes of popular government. (Emphasis added.)

Thornhill v. State of Alabama (1940) 310 U.S. 88, 95.

The goal of the First Amendment is "producing an informed public capable of conducting its own affairs." Red Lion Broadcasting v. F.C.C. (1969) 395 U.S. 367, 392. Thus, "The protection of the public requires not merely discussion, but information." New York Times v. Sullivan (1964) 376 U.S. 254, 272. The mark at which the First Amendment aims is "the widest possible dissemination of information from diverse and antagonistic sources." Associated Press v. United States 326 U.S. 1, 20.

> [A]bove all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas, or its content. [Citations.] To permit the continued building of our politics and culture, and to assure self-fulfillment for each individual, our people are guaranteed the right to express any thought, free from government censorship. The essence of this forbidden censorship is content control. Any restriction of expressive activity because of its content would completely undercut the 'profound national commitment to the principle that debate on public issues should be uninhibited, robust and wide-open.

Police Department v. Mosley (1972) 408 U.S. 92, 96.

Since communication is essential to thinking and nothing is more private than the machinations of one's mind, Armstrong's right to privacy is implicated by the agreement restrictions as well.

Scientology's argues that "[e]ven if there were facts alleged which showed the agreement here removed the constitutional rights of defendant, the existence of such facts does not give rise to a defense of breach of contract. A person is entitled to contract away or to waive his constitutional rights." (Demurrer at 4:21-25) This argument should be made to a jury. Armstrong has alleged sufficient facts that fraud, undue influence and mistake vitiated the consent required to form a valid contract in order to raise the issue whether, assuming without conceding that First Amendment rights can be waived in perpetuity, there was an intentional relinquishment of a known right. Johnson v. Zerbst (1938) 304 U.S. 458.

G. Armstrong's Contractual Defenses Are Meritorious

The elimination of the independence of Armstrong's counsel and turning said counsel's advocacy in Scientology's favor eliminated Armstrong's bargaining power. Said agreements are standardized inasmuch as they have been employed in approximately 30 different instances in order to bury the fruits of discovery in civil litigation. (AA at 21:11-14, 29:4-9)

The facts that have been alleged, read liberally as a whole, allege facts sufficient to support all of Armstrong's defenses, C.C.P. § 452, including but not limited to frustration of purpose, lack of mutuality, impossibility of performance, lack of consideration, unconscionability, hardship, unreasonableness, and failure of consideration.

III. LEAVE TO AMEND IS REQUESTED

In the event that the Court sustains plaintiff's demurrer to any part of defendants' answer, plaintiff requests leave to amend his amended answer of any part thereof to allege facts sufficient to support such affirmative defense. [5]

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[5] For example, Armstrong recognizes that no facts have been pleaded to support his affirmative defenses of res judicata and collateral estoppel. Such facts would be based on Scientology's failed effort to enforce the settlement agreement here in Armstrong I and are readily ascertainable. Moreover, as this was an issue during the course of the prelminary injunction hearing, Scientology knows the basis for the defenses.

IV. CONCLUSION

Based upon the foregoing points, and the authorities cited in support thereof, Armstrong respectfully submits that Scientology's demurrer should be denied.

DATED: November 18, 1992

By: ____________________
FORD GREENE and PAUL MORANTZ
Attorneys for Defendant
GERALD ARMSTRONG and THE
GERALD ARMSTRONG CORPORATION

PROOF OF SERVICE

I am employed in the County of Marin, State of California. I am over the age of eighteen years and am not a party to the above entitled action. My business address is 711 Sir Francis Drake Boulevard, San Anselmo, California. I served the following documents: DEFENDANTS' OPPOSITION TO PLAINTIFF'S DEMURRER TO AMENDED COMPLAINT

on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California:

Andrew Wilson, Esquire — Also By Fax
WILSON, RYAN & CAMPILONGO
235 Montgomery Street, Suite 450
San Francisco, California 94104

LAURIE J. BARTILSON, ESQ. — Also By Fax
Bowles & Moxon
6255 Sunset Boulevard, Suite 2000
Los Angeles, California 90028

[x]	(By Mail)	I caused such envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California.
[ ]	(Personal)	I caused said papers to be personally service on the office of opposing counsel.
[x]	(State)	I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

DATED: November 19, 1992

Andrew H. Wilson
WILSON, RYAN & CAMPILONGO
235 Montgomery Street
Suite 450
San Francisco, California 94104
(415) 391-3900

Laurie J. Bartilson
Karen D. Holly
BOWLES & MOXON
6255 Sunset Boulevard
Suite 2000
Hollywood, California 90028
(213) 661-4030

Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY INTERNATIONAL

FILED
LOS ANGELES SUPERIOR COURT
NOV 24 1992
JAMES H. DEMPSEY, CLERK
BY S. ANDERSON, DEPUTY

FILED
NOV 16 1994
HOWARD HAN
MARIN COUNTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

157680

CHURCH OF SCIENTOLOGY OF INTERNATIONAL, a California not-for-profit religious corporation;

Plaintiff,

vs.

GERALD ARMSTRONG and DOES 1 through 25, inclusive,

Defendants.

Case No. BC 052395

PLAINTIFF CHURCH OF SCIENTOLOGY INTERNATIONAL'S REPLY TO DEFENDANT'S OPPOSITION TO PLAINTIFF'S DEMURRER TO AMENDED ANSWER

HEARING: November 30, 1992
DEPT: Dept. 30

DISC. CUTOFF: None
TRIAL DATE: None

I. INTRODUCTION

Defendant Gerald Armstrong ("Armstrong") makes numerous inflammatory arguments to avoid demurrer, but beneath the rhetoric, his arguments distill down to two recurring claims -- that the Church of Scientology ("the Church") is some "behemoth," quintessential bad-guy and that Armstrong should not have taken his attorney's advice and entered into a settlement agreement with the Church. When Armstrong's arguments are dissected based on the law and the facts, their lack of substance becomes evident.

His arguments regarding the illegality of the agreement stem from his dissatisfaction with his own attorney, rather than from defects in the agreement itself. In his arguments regarding fraud and deceit, Armstrong attempts to convince the court that the settlement agreement was void because of fraud in the inception. Although he claims he did not know what he was signing, his claim of ignorance stems only from his post partum unhappiness with the advice he received from the lawyer he himself retained. Armstrong cites no case to support the proposition that a contract becomes void, not because of the fraud of one of the parties, but because of taking the advice of one's own attorney.

Armstrong's defense of mistake is based on the same shaky ground--his complaints about the conduct of the lawyer representing him. Although Armstrong attempts to base his mistake defense on the claim that "Scientology had compromised" his attorney and that his attorney was acting as Scientology's agent, there are no facts pleaded (and none exist) which establish that Armstrong's attorney was acting as an agent of the Church.

Similarly, Armstrong's affirmative defense of undue influence is based on complaints about his attorney and other parties who were signatories to the settlement agreement, who Armstrong claims pressured him to participate in the settlement agreement. Armstrong also attempts to buttress his undue influence defense with allegations of a "fair game policy." However, there is no basis for the assertion that the alleged "fair game policy" is present Church doctrine, or that it motivated the Church's acts here.[1] In any case, Armstrong complains about undue influence directed at his attorney and other litigants rather than against himself. He cites not a single case which stands for the proposition that a party to an agreement can assert the defense of undue influence based on the influence supposedly wielded over disrelated parties.

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[1] Indeed, "Fair Game" is not part of current Church doctrine, and never did mean what Armstrong claims it meant. (See, concurrently filed Reply In Support of Motion to Stirke.) More importantly Armstrong's repeated references to "fair game" are irrelevant, as the mere existence of a fair game policy cannot form a basis for civil liability. Christopherson v. Church of Scientology (1982) 644 P.2d 577-591. Discussion of the supposed fair game doctrine in other cases does not establish that this doctrine actually existed or has any bearing on this case. Sosinsky v. Grant, (1992) ___Cal.App.4th __, 8 Cal.Rptr.2d 552.

Armstrong's constitutional defenses are similarly without merit. The law clearly allows him to relinquish his constitutional rights for purposes of achieving a settlement agreement.

Armstrong's also fails to demonstrate any facts showing that he could, under the most liberal interpretation, demonstrate such contractual defenses as frustration of purpose, lack of mutuality, impossibility of performance, lack of consideration, unconscionability, hardship, and unreasonableness. Armstrong's contractual defenses boil down to the same rehash of his two basic themes--that Scientology is bad and that he shouldn't have trusted his own lawyer.

II. DISCUSSION

A. Dismissal Of The Demurrer Is Not Warranted.

Plaintiff first made its motion to strike in August, 1992, a motion that was necessitated by defendant's inclusion of extensive improper and offensive material in the answer. Defendant's answer contained so many unnecessary and prejudicial references that plaintiff's could not focus on the actual averments in the answer. In such circumstances it would have been a useless exercise to bring a demurrer based on defendant's first answer. Consequently, there is no reason now to strike plaintiff's demurrer based on the application of Local Rule 181.

B. There Is No Basis For Armstrong's Affirmative Defense Of Illegality.

Armstrong complains that the settlement agreement he signed with the Church was illegal based on his assertions that: (1) he was pressured by his attorney, Michael Flynn, into signing agreements with Scientology, (2) the agreement contains a "collusive reversal of Judge Breckenridge's decision" and attempts to obtain repossession of the Church's private documents, the MCCS tapes, (3) there were secret agreements between Flynn and the Church, and (4) Scientology coerced of Flynn into acting as its own agent because of a supposed "fair game" policy. None of these protestations state a single fact on which to base the defense of illegality of the settlement agreement.

Armstrong's first claim with regard to the defense of illegality is nothing more than a complaint that his own attorney pressured him into signing the settlement agreement with the Church. Notably, he cites not a single case to support the proposition that a contract becomes illegal because one of the parties accedes based on the advice of his attorney.

Armstrong's second claim of illegality, based on a supposed "collusive reversal" of the Breckenridge decision, is equally vacuous. Not only was there no actual reversal of the Breckenridge opinion by agreement, but if there had been such an agreement for reversal, it would have been legal and appropriate. The courts have authority "to reverse (or otherwise vacate) a trial court's judgment when the parties stipulate to such action as a condition of a proposed settlement pending appeal." Neary v. Regents of the University of California, 92 Daily Journal D.A.R. 11277, August 14, 1992. In the Neary case the California Supreme Court concluded "that, as a general rule, the parties should be entitled to a stipulated reversal to effectuate settlement absent a showing of extraordinary circumstances that warrant an exception to this general rule. This presumption in favor of a stipulated reversal is sound and salutary for several reasons." Id. The Supreme Court acknowledged the efficiency of entering into post-judgment settlements and noted that allowing such reversals through settlement agreements promotes fairness and integrity of the judicial process. Id. Therefore, even if a reversal of the Breckenridge opinion had been obtained by stipulation, such a reversal would have been not only permissible but favored under policies promoting settlement agreements.

Armstrong makes a further somewhat unintelligible claim that the agreement is illegal because the Church obtained possession of its private property, the MCCS tapes, which Armstrong had previously stolen. Notwithstanding Armstrong's hyperbolic statements about the tapes, the United States Supreme Court has definitively ruled that "a person's interest in maintaining the privacy of his 'papers and effects' is of sufficient importance to merit constitutional protection." Church of Scientology of California v. Zolin, U.S. Supreme Court case no. 91-84_, slip op., November 16, 1992. The Zolin case arose after Armstrong had stolen certain tapes which were the private property of the Church.[2]

Armstrong's remaining claims regarding illegality of the settlement agreement are nothing more than variations on the theme that Scientology pressured Armstrong's attorney, Michael Flynn, by using a "fair game" policy and making "secret" agreements. Armstrong cites not a single authority to establish that an agreement becomes illegal because the attorney handling the agreement participated in alleged unethical conduct.

Armstrong also discourses disjointedly on the subject of illegal consideration without pleading any facts showing the illegality of the consideration here. In this case, Armstrong received a very sizable cash settlement in exchange for his promises to refrain from specified, agreed-upon conduct. Armstrong does not appear to contend that the cash consideration he received was illegal. Instead he merely reiterates his arguments about the illegality of the agreement itself.[3]

C. Armstrong Fails To Show A Defense Of Fraud Or Deceit

Armstrong attempts to plead the defense of fraud in the inception, but he fails to show that he was deceived as to the nature of his acts. The facts Armstrong pleads to show fraud in the inception show, if anything, the defense of fraud in the inducement. Armstrong complains only about the Church's supposed fraud in representing to him what the Church's intentions were with regard to the settlement agreement. He claims the Church intended to use the settlement agreement as a tool to implement fair game and to "engineer a reversal of Judge Breckenridge's decision in Armstrong I." Defendant's

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[2] The IRS obtained the tapes through actions contended by the Church to be illegal. Although the Supreme Court in Zolin did not express an opinion on the Church's argument regarding the government's purloining of the tapes, the Court ruled that the Ninth Circuit should not have considered the issue moot and could have ordered the IRS to return or destroy copies of the tapes. Id. at p. 7, slip op.

[3] Armstrong apparently claims that the settlement agreement constitutes an agreement to suppress evidence. Review of the agreement reveals as a matter of law that the settlement contract does not constitute such an agreement. Even if it did contain illegal provisions, such provisions are severable. Carter v. Seaboard Finance Co. (1949) 33 Cal.2d 564, 203 P.2d 758.

Opposition to Demurrer to Amended Answer at p. 7.

The facts pleaded by Armstrong demonstrate unquestionably that he knew what he was signing since he complains vociferously about the fact that his attorney gave him the incorrect advice that the provisions of the agreement were not enforceable when in fact they were enforceable. This makes it patently clear that Armstrong knew exactly what he was signing.

In such situations, a contract is formed, but it is voidable if fraud in the inducement can be shown. In order to void the contract, however, "the aggrieved party must rescind by prompt notice and offer to restore the consideration received, if any." Witkin 1, Summary of California Law, Contracts, § 403, p. 363 (9th ed. 1987), (emphasis added) citing Garcia v. California Truck Company (1920) 183 Cal. 767, 192 Pac. 708.

Since Armstrong has pleaded facts that relate only to a claim of fraud in the inducement, his remedy is rescission, but he pleads no fact showing that he gave prompt notice or offered to restore the substantial payment which he received as consideration for the settlement contract.

Armstrong has failed to plead the necessary facts showing he is entitled to rescission and he has failed to plead any facts showing a defense for fraud in the inception. His entire fraud defense should be stricken.

D. Armstrong's Equitable Defenses Are Invalid

Armstrong fails to allege facts showing equitable defenses are available. He has not specially pleaded the elements of estoppel. (See Judelson v. American Mutal Bearing Co. (1948) 89 Cal.App.2d 256, 200 P.2d 836), and legal conclusions regarding estoppel are insufficient. Fishbein v. Western Auto Supply Agency (1937) 19 Cal.App.2d 426, 65 P.2d 928.

The equitable defense of laches is not available in an action at law. Hopkins v. Hopkins (1953) 116 Cal.App. 2d 174, 253 P.2d 723. In addition, Armstrong fails to plead facts showing unclean hands with regard to his entry into the settlement agreement.

E. Armstrong's Mistake Defenses Have No Merit

Armstrong asserts a ninth affirmative defense of mistake of law which is based solely on the assertion "that Scientology compromised his attorney." Defendants Opposition at p. 8. Armstrong thus admits that his defense of mistake emanates from his reliance on the mistaken advice of his attorney.

As a matter of law, Armstrong has failed to meet the requirements to establish a mistake of law. Relief may be granted for a mistake "not caused by the neglect of a legal duty on the part of the person making the mistake." Cal. Civ. Code § 1577. Misapprehension of the law by one party, "of which the other parties are aware at the time of contracting," but which they do not rectify may constitute a mistake of law. Cal. Civ. Code § 1578.

Armstrong attempts to claim a defense of mistake of law on the theory that "Scientology was apparently aware that 'a person is entitled to contract away or to waive his constitutional rights.'" Plaintiff's Opposition at p. 9. This statement fails to show that Scientology was aware of a mistake of law. To the contrary, Armstrong's own pleading shows that the Church believed the provisions of the contract were enforceable and that the agreement made with Armstrong was valid. If there was any mistake of law, it was occasioned by Armstrong's own attorney, and Armstrong has pleaded no facts showing that the Church knew of a mistake of law in the agreement and knowingly took advantage of that mistake.[4]

F. The Defense Of Undue Influence Is Unsupported By Any Facts.

The basis of the defense of undue influence lies in the existence of a confidential relationship whereby one party places its confidence in another. Cal.Civ.Code § 1575. The defense of undue influence may also arise when one person takes unfair advantage of another's weakness or distress. See Odorivz v. Greenfield Schools Dist. (1966) 246 Cal.App.2d 123, 54 Cal.Rptr. 533.

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[4] Armstrong apparently acknowledges that his mistake of fact defense has no merit since he does not bother to argue this defense in his Opposition.

There is no allegation that Armstrong placed confidence in the Church or that the Church took unfair advantage of his weakness of mind or distress. Armstrong's real complaint is that he placed confidence in his attorney, who he believes gave him incorrect advice. As a matter of law, the defense of undue influence is not available in such circumstances.

Moreover, the remedy for undue influence is limited to rescission, and, as noted earlier, Armstrong has not pleaded one fact showing entitlement to rescission. See 1 Witkin, Summary of California Law, Contracts, supra, at § 424.

G. Armstrong's Constitutional Defenses Are Invalid.

Armstrong argues histrionically that he was deprived of constitutional protections in performance of a settlement agreement because litigants in "Scientology-style litigation" must "begin against a behemoth on a wildly-tilted playing field." Defendant's Opposition at p. 11. He further claims that the settlement agreement deprives him of the right to associate with persons in the organization of his choice, which apparently consists of persons "dedicated to exposing Scientology." Thus, he argues, his free association, free speech and press rights are violated.

Armstrong cites no authority to support the proposition that the settlement agreement deprives litigants who are adverse to Scientology of their due process rights to a fair trial and that this in turn violates legal protection. This omission is undoubtedly based on the great dearth of cases that support such a proposition.

With regard to his First Amendment arguments Armstrong overlooks that it is well established that individuals may enter into contracts which restrict their First Amendment or other constitutional rights. ITT Telecom Products Corp. v. Dooley (1989) 214 Cal.App.3d 307, 319, 262 Cal.Rptr. 773, 780 (even First Amendment free speech rights may be waived by contract); In re Steinberg (1983) 148 Cal.App.3d 14, 20, 195 Cal.Rptr. 613, 617 (a moviemaker may contractually limit his First Amendment rights to disseminate his movie).

Other jurisdictions have also rejected the concept that a person may enter into an agreement to give up constitutional rights and later repudiate the agreement by claiming a violation of such rights. See Trump v. Trump (1992) N.Y. 2d attached hereto. In the Trump case, the court specifically noted that parties may stipulate away their constitutional rights and pointed out that a nondisclosure agreement made for purposes of settling litigation does not constitute the "state action" which is a necessary component of an illegal prior restraint.[5]

H. There Is No Merit To Armstrong's Contractual Defenses.

Armstrong alleges generally that he stated facts sufficient to support the defenses of frustration of purpose, lack of mutuality, impossibility of performance, lack of consideration, unconscionability, hardship, unreasonableness, and failure of consideration.

Armstrong's consideration claims are totally dependent on his claim that the consideration offered for the agreement was unlawful because the agreement itself was illegal. These defenses should be summarily dispatched since the contract itself is not illegal, as discussed previously herein.

With regard to the legal defense of impossibility of performance, such a defense is available in circumstances where a party's performance is made impractical "without his fault by the occurrence of an event, the nonoccurrence of which was a basic assumption on which the contract was made . . ." Restatement (Second) Contracts, § 261. The impossibility arises from the nature of things, rather than the inability of the promisor to perform the terms of the promise. Witkin, Contracts, supra, § 774, citing cases.

The defendant here has pleaded no facts showing performance is impossible. There are no facts alleged which show either that it is objectively impossible to perform the terms of the agreement or that Armstrong has the inability to make such performance. Armstrong cites no case law or other authority to support his claim of impossibility of performance.

The claim of frustration of purpose is equally devoid of merit. The defense of frustration of purpose arises where the basic reason, which was recognized as both parties as being a reason for entering into the contract, is destroyed by an unforeseen or superseding event. See Dorn v. Goetz (1948) 85 Cal.App.2d 407, 193 P.2d, 121. The nonoccurrence of the frustrating event must involve a basic premise on which the contract was made. Restatement (Second) of Contracts, § 265.

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[5] Armstrong's only response to the rule of law that allows a person to waive or relinquish constitutional rights by entering into a specific contract is to argue that "this argument should be made to a jury." Opposition at p. 13. Armstrong's statement overlooks the fact that his constitutional defenses are deficient as a matter of law and that there isno need for a jury determination of such issues.

In this case, Armstrong has alleged not a single fact showing that the assumptions on which the contract were made no longer exist or that any occurrence destroyed the basic reason for entering into the contract.

Armstrong's defenses of lack of mutuality, hardship, and unreasonableness are based solely on his claim that the Church influenced Armstrong's counsel. Again, this allegation fails to establish any facts that provide a basis for these defenses.

III. CONCLUSION

Review of Armstrong's Opposition shows that all of his defenses are based on the same weak claim that his attorney was somehow unduly influenced by the Church and, therefore, gave Armstrong incorrect legal advice. This is turn boils down to an admission by Armstrong that he would not have entered the settlement agreement if he had known that it was actually enforceable because adherence to the terms of the agreement prevents him from continuing his campaign to show the world that Scientology is bad. After accepting the Church's money in settlement, Armstrong now wishes to repudiate the agreement and raises a series of nonmeritorious defenses to allow him to accomplish his objective. None of these circumstances form a basis for the defenses which Armstrong asserts. Indeed, scrutiny of the bases of these defenses shows their lack of merit as a matter of law.

Dated: November 24, 1992 Respectfully submitted,
BOWLES & MOXON

By: Karen D. Holly
Karen D. Holly
Andrew H. Wilson
WILSON, RYAN & CAMPILONGO
Attorneys for Petitioner CHURCH OF SCIENTOLOGY INTERNATIONAL

57 Or.App. 203

Julie CHRISTOFFERSON, Respondent,

v.

CHURCH OF SCIENTOLOGY OF PORTLAND, an Oregon nonprofit corporation, Church of Scientology, Mission of Davis, a nonprofit California corporation doing business in Oregon, Delphian Foundation, an Oregon nonprofit corporation, and Martin Samuels, Appellants.

No. A7704-05184; CA 15952.

Court of Appeals of Oregon.

Argued and Submitted Sept. 3, 1981.

Decided May 3, 1982.

Reconsideration Denied June 10, 1982.

Plaintiff brought action against religious corporations and others to recover for the tort of outrageous conduct and fraud. The Circuit Court, Multnomah County, Robert P. Jones, J., entered judgment for plaintiff, and defendants appealed. The Court of Appeals, Gillette, P. J., held that: (1) evidence was insufficient as a matter of law to establish the tort of outrageous conduct; (2) plaintiff could not recover on fraud claim from religious corporation which did not employ individuals who allegedly made misrepresentations to plaintiff; (3) plaintiff could not recover on fraud claim from nonprofit educational institution on basis of misrepresentations allegedly made by agents and employees of religious corporation; (4) evidence was sufficient for jury on the issue of whether misrepresentations allegedly made by agents and employees of one of religious corporations were made for a wholly nonreligious purpose so as not to come within the rule that the truth or falsity of religious beliefs and doctrines may not be submitted for determination by jury in action for fraud; and (5) defendant religious corporation was entitled to the protection of the First Amendment for statements regarding its religious beliefs and practices unless it were shown that statements made were part of an offer of those services to the public on a wholly secular basis; because trial court erroneously instructed jury in that regard, judgment against one of religious organizations would be reversed and cause would be remanded for retrial.

Reversed as to certain defendants; reversed and remanded for new trial as to other defendants.

1. Damages 🔑208(6)

In outrageous conduct action, although it is ordinarily for trier of fact to determine not only historical facts, but also whether offensiveness of defendant's conduct exceeds any reasonable limit of social toleration, it is for trial court to determine, in the first instance, whether defendant's conduct may reasonably be regarded as too extreme and outrageous as to permit recovery.

2. Damages 🔑50.10

It is only by proof of conduct that is beyond the limits of social toleration that plaintiff may recover in an action for outrageous conduct, no matter what defendant may have intended and no matter what the effect on plaintiff may have been.

3. Damages 🔑50.10

In action brought against religious organization and others by former member of the organization, evidence was insufficient, as a matter of law, to establish the tort of outrageous conduct during time that plaintiff was associated with defendants, since plaintiff joined the religious organization voluntarily, there was no evidence that plaintiff was threatened or forced to remain involved in the religious organization, and no evidence that during her association with the organization, plaintiff was afraid to terminate her involvement or feared defendants in any way.

4. Damages 🔑50.10

In action brought against religious organization and others by former member of the organization, evidence was insufficient to establish tort of outrageous conduct occurring subsequent to plaintiff's deprogramming, since fact that libel action had been filed by certain of defendants against plaintiff did not establish outrageous conduct, there was no evidence that defendants

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informed plaintiff that she had been declared a "suppressive person" subject to organization's alleged policy of retribution, and defendants' issuance of document forbidding persons associated with defendants from communicating with plaintiff was issued after plaintiff's attorney had demanded that defendants not contact plaintiff.

5. Fraud ⚷30

Plaintiff could not recover on her cause of action for fraud against religious corporation, since none of individuals who allegedly made misrepresentations to plaintiff was claimed to have been an agent or employee of the religious corporation, and fact that the religious corporation and another religious corporation which employed individuals who allegedly made the misrepresentations were organizations of the same religious movement did not by itself provide a sufficient link to hold defendant religious corporation liable for what may have been done by the other religious corporation.

6. Corporations ⚷1.6(13)

Plaintiff could not recover on her fraud claim from nonprofit educational institution on the basis of alleged misrepresentations made by agents and employees of religious corporation, since evidence that the two entities shared a corporate officer and shared facilities did not support "piercing the corporate veil" so as to permit treating the educational institution and the religious corporation as one, and there was no evidence that educational institution had any right to control the actions of the religious corporation or had any actual control over those actions.

7. Fraud ⚷64(3)

In fraud action brought against religious corporation, its president, and others, evidence on issue of whether religious corporation's president had knowledge of misrepresentations allegedly made by religious corporation's employees and agents was sufficient for jury.

8. Fraud ⚷50, 64(1)

To establish fraud, plaintiff must ordinarily prove that representations made were false, but when religious beliefs and doctrines are involved, the truth or falsity of religious beliefs or doctrines may not be submitted for determination by jury.

9. Fraud ⚷64(1)

In action for fraud brought against religious corporation and others, trial court was required to determine the religious character of alleged misrepresentations only if it could do so as a matter of law, that is, if there were only one conclusion to be drawn from the evidence. U.S.C.A. Const.Amend. 1.

10. Constitutional Law ⚷84

For purposes of rule providing that the truth or falsity of religious beliefs or doctrines may not be submitted for determination by jury in action for fraud; while beliefs relating to the existence of, and man's relationship to, a God are religious, belief in a traditional, or any, "god" is not a prerequisite to a finding that a belief is religious. U.S.C.A.Const.Amend. 1.

11. Constitutional Law ⚷84

Fact that religion is of relatively recent origin does not mean that it is not entitled to the protection of the First Amendment. U.S.C.A.Const.Amend. 1.

12. Constitutional Law ⚷84

Organization which was incorporated as a tax-exempt religious organization, which had ordained ministers and characterized itself as a church, and which had a system of beliefs, or creed, which encompassed beliefs that were religious in character was a religious organization entitled to invoke the protection of the free exercise clause. U.S.C.A.Const.Amend. 1.

13. Fraud ⚷36

A religious organization, merely because it is such, is not shielded by the First Amendment from all liability for fraud: if statements by agents of religious organization do not concern the religious beliefs and practices of the organization, the free exercise clause provides no defense to action for fraud. U.S.C.A.Const.Amend. 1.

14. Constitutional Law 🔑84

In the context of the establishment clause, the characterization of religious organization's activity as nonreligious is not a determinative factor, but the characterization of beliefs as religious by one seeking the protection of the free exercise clause is not determinative either. U.S.C.A.Const. Amend. 1.

15. Fraud 🔑64(1)

In action for fraud brought against religious corporation, evidence was sufficient for jury on the issue of whether misrepresentations allegedly made by religious corporation's agents and employees were made for a wholly nonreligious purpose so as not to come within the rule that the truth or falsity of religious beliefs and doctrines may not be submitted for determination by jury in action for fraud.

16. Appeal and Error 🔑1177(5)
Constitutional Law 🔑84

In fraud action brought against religious corporation and others, in which evidence established that defendant was a religious organization and that courses which plaintiff was induced to participate in were part of religious beliefs and practices of the religion, religious corporation was entitled to First Amendment protection for statements regarding its religious beliefs and practices unless it were shown that statements made were part of an offer of those services on a wholly secular basis; because trial court erroneously instructed that a determination should be made for each of alleged misrepresentations as to whether it was religious was not accurate, judgment against religious organization would be reversed and cause remanded for retrial.

17. Fraud 🔑13(2)

State of mind of one accused of making fraudulent representations is at issue when one of the elements to be shown is speaker's knowledge of the falsity of the representation being made.

18. Fraud 🔑54

In action for fraud brought against religious corporation and others, trial court erred in excluding three exhibits offered to show the good faith of one of the individuals who made an alleged misrepresentation to plaintiff, since the exhibits were relevant to the issue of the state of mind of the one accused of making fraudulent representations.

19. Fraud 🔑65(4)

In action for fraud brought against religious corporations and others, trial court's instruction that, in order to find for plaintiff, jury was required to find that plaintiff, having a right to do so, reasonably relied upon representation and did not know it was false, adequately and accurately stated applicable law, and therefore, trial court did not err in denying defendant's requested instruction defining "justifiable reliance."

20. Fraud 🔑65(1)

In action for fraud brought against religious corporation and others, trial court erred in refusing to submit defendant's requested instruction defining "material fact," since that term constituted an element of the action.

21. Trial 🔑260(6)

In action for fraud brought against religious corporation and others, trial court did not err in failing to instruct jury that "fraud is never presumed," since, within context of the instructions as a whole, jury was adequately instructed in that regard.

22. Fraud 🔑65(1)

In action for fraud brought against religious corporation and others, trial court did not err in failing to give defendants' requested instructions containing the specific language of the federal and state constitutional provisions establishing religious freedom. U.S.C.A.Const.Amends. 1, 14; Const.Art. 1, §§ 2, 3.

23. Fraud 🔑65(1)

In action for fraud brought against religious corporation and others, record established, as a matter of law, that the beliefs practiced by defendants constituted a religion, and defendants were entitled to jury instruction to that effect.

24. Fraud ⟹61

Punitive damages are not unavailable for fraud merely because the fraudulent representations are "speech." U.S.C.A. Const.Amend. 1.

25. Fraud ⟹61

In action for fraud brought against religious corporations and others, plaintiff was not precluded from recovering punitive damages, since there is no constitutional requirement that religious organizations should not be made liable for punitive damages because they are religious organizations, even if the content of the statement which they are alleged to have made is not religious. U.S.C.A.Const.Amend. 1.

Charles J. Merten, Portland, and Emily M. Bass, New York City, argued the cause for appellants. On the briefs was Charles J. Merten, Portland.

Garry P. McMurry, Portland, argued the cause for respondent. With him on the brief were Patric J. Doherty, Ronald L. Wade, Rankin, McMurry, VavRosky & Doherty, William T. Powers and Powers & Powers, Portland.

Elden M. Rosenthal and Leslie M. Roberts, Portland, filed a brief amicus curiae for Cooperating Counsel for the American Civil Liberties Union of Oregon.

James K. Hoppa, Portland, Lee Boothby, and Robert W. Nixon, Washington, D. C., filed a brief amicus curiae for Americans United for Separation of Church and State.

Before GILLETTE, P. J., YOUNG, J., and ROBERTS, J. Pro Tem.

GILLETTE, Presiding Judge.

Defendants appeal from the judgment entered on a jury verdict in favor of plaintiff in her action for fraud and intentional infliction of emotional distress ("outrageous conduct").[1] Plaintiff's fraud cause of action alleged 14 misrepresentations which induced her to pay some $3,000 to defendants. Her cause of action for outrageous conduct alleged in two counts a scheme to gain control of her mind and to force her into a life of service to defendants and a course of retaliatory conduct after plaintiff disassociated herself from defendants. Defendants interposed various defenses, including a defense based upon the Free Exercise Clause of the First Amendment. The jury awarded compensatory and punitive damages. We reverse and remand.

THE PARTIES AND THE FACTUAL BACKGROUND

Plaintiff is a young woman who moved to Portland from Eureka, Montana, in July, 1975, shortly after she graduated from high school, intending to obtain some work experience before going to college in the fall to study civil engineering. When she first arrived, she stayed for a few days with a friend from Montana, Pat Osler, and then moved into an apartment with a young woman she met through Osler. She soon found a job with an engineering firm and worked there full-time.

Defendants are the Church of Scientology of Portland (COSOP), a religious corporation; the Church of Scientology, Mission of Davis (the Mission), also a religious corporation; the Delphian Foundation (Delphian), a non-profit educational institution not expressly organized as a church-related school; and Martin Samuels, an ordained minister of the Church of Scientology and the president of the Mission and Delphian.

The beliefs of Scientology were summarized in *Founding Church of Scientology v. United States*, 409 F.2d 1146, 1151–52, (D.C. Cir.1969), in a manner which appears to be accurate according to the record before us in this case:

> "The movement apparently rests almost entirely upon the writings of one man, L. Ron Hubbard, an American who maintained the headquarters of the

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[1] Plaintiff's complaint also contained a cause of action for Unlawful Trade Practices against all defendants. The jury found that the action was barred by the statute of limitations as to all defendants except the Church of Scientology of Portland. As to the Church, it awarded no damages on that claim, and we are not asked to review that verdict.

movement in England at the time this action was brought. In the early 1950's, Hubbard wrote tracts elucidating what he called 'Dianetics.' Dianetics is a theory of the mind which sets out many of the therapeutic techniques now used by Scientologists, * * *.

"The basic theory of Dianetics is that man possesses both a reactive mind and an analytic mind. The analytic mind is a superior computer, incapable of error, to which can be attributed none of the human misjudgments which create social problems and much individual suffering. These are traceable rather to the reactive mind, which is made up of 'engrams,' or patterns imprinted on the nervous system in moments of pain, stress or unconsciousness. These imprinted patterns may be triggered by stimuli associated with the original imprinting, and may then produce unconscious or conditioned behavior which is harmful or irrational.

"Dianetics is not presented as a simple description of the mind, but as a practical science which can cure many of the ills of man. It terms the ordinary person, encumbered by the 'engrams' of his reactive mind, as a 'preclear,' by analogy to a computer from which previously programmed instructions have not been erased. The goal of Dianetics is to make persons 'clear,' thus freeing the rational and infallible analytical mind. The benefits this will bring are set out in considerable and alluring detail. All mental disorders are said to be caused by 'engrams,' as are all psychosomatic disorders, and that concept is broadly defined.

"A process of working toward 'clear' is described as 'auditing.' This process was explicitly characterized as 'therapy' in Hubbard's best-selling book *DIANETICS: THE MODERN SCIENCE OF MENTAL HEALTH* (1950). The process involves conversation with an 'auditor' who would lead the subject or 'preclear' along his 'time track,' discovering and exposing 'engrams' along the way. Though auditing is represented primarily as a method of improving the spiritual condition of man, rather explicit benefits to bodily health are promised as well. Hubbard has asserted that arthritis, dermatitis, asthma, some coronary difficulties, eye trouble, bursitis, ulcers and sinusitis are psychosomatic and can be cured, and further that tuberculosis is 'perpetuated by engrams.'

* * * *

"The Hubbard Electrometer, or E-meter, plays an essential, or at least important, part in the process of auditing. The E-meter is a skin galvanometer, similar to those used in giving lie detector tests. The subject or 'preclear' holds in his hands two tin soup cans, which are linked to the electrical apparatus. A needle on the apparatus registers changes in the electrical resistance of the subject's skin. The auditor asks questions of the subject, and the movement of the needle is apparently used as a check of the emotional reaction to the questions. According to complex rules and procedures set out in Scientology publications, the auditor can interpret the movements of the needle after certain prescribed questions are asked, and use them in diagnosing the mental and spiritual condition of the subject." (Footnotes omitted).

From Dianetics developed Scientology, which incorporates Dianetics, but includes broader concepts. As characterized in *Founding Church, supra:*

"With Scientology came much of the overlay which lends color to the characterization of the movement as a religious one. Hubbard has claimed kinship between his theories and those espoused by Eastern religions, especially Hinduism and Buddhism. He argues that man is essentially a free and immortal spirit (a 'thetan' in Scientological terminology) which merely inhabits the 'mest body' ('mest' is an acronym of the words matter, energy, space, time). Man is said to be characterized by the qualities of 'beingness,' 'havingness,' and 'doingness.' The philosophical theory was developed that the world is constructed on the relationships of 'Affinity,' 'Reality' and 'Communication,' which taken together are de-

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nominated 'the ARC Triangle.'" 409 F.2d at 1152. (Footnotes omitted).

The thetan is said by Hubbard to be immortal: it is the spirit controlling the body, through the mind. After the death of the body, the thetan "exteriorizes" and returns in another body. The thetan does not care to remember the life just lived when separated from the body and mind, but because each individual comes back, he is responsible for what goes on today because he will experience it tomorrow.

Plaintiff became involved with Scientology[2] almost immediately upon arriving in Portland. Her friend Osler was taking courses from the Mission and, on his advice, she enrolled in a communications course offered by the Mission. As part of the enrollment process, she also applied for membership in the Church of Scientology. Because she was not yet 18 years old, she was told that she must obtain her mother's consent to receive the services offered by the Mission. She telephoned her mother and dictated a consent form which her mother typed, signed and returned.

Plaintiff paid $50 for the communications course and began attending classes at the Mission every evening after work and at least one day on the weekends. Before completing the communications course, she signed up for another course and continued to participate in courses and services offered at the Mission until the beginning of October, 1975.

In early September, plaintiff applied to become a provisional staff member at Delphian, located at Sheridan, Oregon. She informed her parents that she had decided not to attend college that fall. Moving to Delphian in early October, she worked as a provisional staff member until the beginning of December. At that time, she was asked to leave Delphian until she could convince her mother to stop opposing her involvement in Scientology. Plaintiff moved from Sheridan back to Portland and worked as a waitress. While there, she worked with a staff member of the Mission, attempting to convince her parents not to interfere with Scientology.

Plaintiff went home for Christmas and then returned to Portland in the early part of January, 1976. She lived with several people, mainly Scientologists, and continued to work as a waitress. She did not participate in courses or programs at the Mission, but continued to work on "handling" her parents. In April, 1976, plaintiff went to her parents' home in Montana to "handle" them, that is, to convince them to accept her involvement in Scientology, or else to "disconnect" from them. When she reached home, she was locked in the house and "deprogrammed." She did not return to her involvement with Scientology and, in fact, became active in anti-Scientology activities and participated in "deprogramming" others. She filed this action in 1977.

Defendants raise 52 assignments of error, covering nearly every phase of the proceedings from pretrial to post-verdict. Organization of the issues is somewhat complicated by the various causes of action and the various defendants. Several assignments involve the First Amendment defense raised by defendants. However, before reaching the constitutional issues which must be decided in this case, we first consider non-constitutional challenges to the outrageous conduct cause of action.

OUTRAGEOUS CONDUCT

Plaintiff alleged two counts of outrageous conduct. The first alleged a scheme to gain control of her mind and to force her into a life of service to defendants. The allegations in this count involve actions committed by defendants during the time that plaintiff was involved with Scientology. At the close of the case, defendants moved for directed verdicts on this cause of action, arguing that, as a matter of law, plaintiff had not proved acts that exceeded the limits of social toleration.[3]

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[2] References to "Scientology" refer to plaintiff's involvement with the movement in general and do not refer to plaintiff's relationship with any particular defendant.

[3] The motion below was directed to both

The tort of intentional infliction of emotional distress, or outrageous conduct, is still in the process of developing in this state. For example, there remain some questions as to what state of mind is required in particular situations to subject a defendant to liability. *See Brewer v. Erwin*, 287 Or. 435, 454–58, 600 P.2d 398 (1979); *compare Turman v. Central Billing Bureau*, 279 Or. 443, 568 P.2d 1382 (1977), *with Rockhill v. Pollard*, 259 Or. 54, 485 P.2d 28 (1971).

A "special relationship" between the parties has played a role in every case in this state involving this tort.[4] The tort was characterized in *Turman v. Central Billing Bureau, supra*, as "' * * * an abuse by the actor of a position, or a relation with the other, which gives him actual or apparent authority over the other, or power to affect his interests. * * *.'" 279 Or. at 446, 568 P.2d 1382. *See also Brewer v. Erwin, supra* (landlord and tenant); *Rockhill v. Pollard, supra* (doctor and patient); *Fitzpatrick v. Robbins*, 51 Or.App. 597, 626 P.2d 910, *rev. den.* 291 Or. 151 (1981) (landlord and tenant); *Bodewig v. K-Mart*, 54 Or.App. 480, 635 P.2d 657 (1981), *rev. den.* 292 Or. 450 (1982) (employer-employe).[5] The role of that relationship has recently been explored in *Hall v. May Department Stores Co.*, 292 Or. 131, 637 P.2d 126 (1981), a case involving an employer-employe relationship, in which the court stated:

"The character of the relationship bears on the mental element required to impose liability, *compare Rockhill* with *Turman* and *Brewer*, and also on the next issue, the offensiveness of conduct that crosses the threshold of potential liability, *see Pakos v. Clark*, [253 Or. 113, 453 P.2d 682 (1969)]." 292 Or. at 137, 637 P.2d 126.

A plaintiff's particular susceptibility to distress has also played a part in certain of the cases. *See Rockhill v. Pollard, supra* (plaintiff already distraught because of automobile accident and injury to child); *Turman v. Central Billing Bureau, supra* (plaintiff blind and suffering from glaucoma, requiring treatment by clinic for which bill was being collected); *Fitzpatrick v. Robbins, supra* (plaintiffs aged and visually disabled).

Part of the uniqueness of this case lies in the absence of both of the considerations just discussed. At the close of the evidence, plaintiff withdrew the portion of her complaint which alleged a special relationship between her and defendants. Neither does she argue on appeal that she was in any way particularly susceptible to the infliction of emotional distress.[6]

The type of conduct for which liability may be imposed for infliction of emotional distress, absent physical injury, is not well defined. *Rockhill v. Pollard, supra*, rejected

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counts of the outrageous conduct claim. On appeal, defendants argue that there was no outrageous conduct as a matter of law as to Count II. As to Count I, defendants do not make that precise argument, but make several other arguments, including the argument that the actions are protected by the First Amendment. We decide the issue as to both counts on the non-constitutional basis rather than reach the constitutional issue as to Count I.

[4] *Brewer* specifically did not decide whether there could be recovery in a situation in which there was no special relationship and where only recklessness was shown. One of defendants' assignments of error concerns an instruction which informed the jury that plaintiff could recover if defendants acted recklessly. Plaintiff had previously withdrawn portions of her complaint which alleged a special relationship between her and defendants. We do not reach the issue of the instruction because we dispose of the outrageous conduct claims on other grounds.

[5] *Bodewig* involved one party defendant who had no special relationship to the plaintiff. However, even in that case, some of the acts necessary to establish the tort were committed only by the employer-defendant, *albeit* with the other party defendant's encouragement.

[6] Plaintiff was 17 years old when she first enrolled in the communications course but turned 18 soon after. She does not contend that her age or the fact that she was living on her own for the first time made her particularly susceptible to the infliction of emotional distress.

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the description in Restatement (Second) of Torts § 46 (1965)[7] and decided:

> "We need a simpler test and think it best for this case to merely hold that the conduct must be outrageous in the extreme. It is our impression that the test for liability in these cases can only be worked out on a case by case basis. Here we must determine whether defendant's conduct was so extreme as to warrant the imposition of liability for any severe emotional distress caused thereby." 259 Or. at 59–60, 485 P.2d 28.

In later cases, the type of conduct which would subject a defendant to liability has been characterized as "beyond the limits of social toleration." *Brewer v. Erwin, supra,* 287 Or. at 455, 600 P.2d 398; *see also, Hall v. May Department Stores Co., supra,* 292 Or. at 137, 637 P.2d 126.

[1] Although it is ordinarily for the trier of fact to determine not only the historical facts, but also "whether the offensiveness of the defendant's conduct exceeds any reasonable limit of social toleration," *Hall v. May Department Stores Co., supra,* 292 Or. at 137, 637 P.2d 126,

> "[I]t [is] for the trial court to determine, in the first instance, whether the defendants' conduct may reasonably be regarded as so extreme and outrageous as to permit recovery. If the minds of reasonable men would not differ on the subject the court [is] obliged to grant an order of involuntary nonsuit * * *." *Pakos v. Clark, supra,* 253 Or. at 132, 453 P.2d 682.

The trial court here erred in denying defendants' motions for a directed verdict as to count I of the outrageous conduct cause of action. We find no conduct both alleged and proved under that count that could subject defendants to liability for the tort. Plaintiff's first count alleges:

> "That the above misrepresentations and other unlawful practices were part of a scheme to gain control of Plaintiff's mind and force her into a life of service to the Defendants. She was intentionally alienated from her family and friends. Plaintiff's ability to direct her life and form reasonable judgments was intentionally impaired by Defendants through the use of a crude polygraph, intense peer pressure and other covert means. She was coerced into performing labor for which she was not paid. She was held up to ridicule, humiliated, and forced under threat of retribution and physical harm to follow the dictates of the Defendants, and caused to give Defendants all the monies she had or could beg or borrow from others.
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> "As part of the above scheme, Defendants caused Plaintiff to believe and fear that she would be subject to severe punishment should she ever bring suit against Defendants, voice her disapproval of Defendants' practices, testify against Defendants, demand a return of money from Defendants or commit any other act Defendants determined to be against their interests."

[2] In this pleading, defendants' intent, their conduct and the effect on plaintiff are interwoven. However, this interweaving should not be permitted to obscure the fact that each of the three elements—intent, conduct which is outrageous or beyond the limits of social toleration, and resultant severe emotional distress—must be proved. In the present case, defendants made no

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[7] The Restatement describes the conduct which gives rise to liability as follows:

> "* * * It has not been enough that the defendant has acted with an intent which is tortious or even criminal, or that he has intended to inflict emotional distress, or even that his conduct has been characterized by 'malice,' or a degree of aggravation which would entitle the plaintiff to punitive damages for another tort. Liability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community. Generally, the case is one in which the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, 'Outrageous!'" Restatement (Second) of Torts, § 46, comment d (1965), quoted in *Rockhill v. Pollard, supra,* 259 Or. at 59–60, 485 P.2d 28.

argument concerning intent, but they maintain that there is not sufficient evidence of either of the last two elements—the outrageous conduct and the resultant distress—to permit the case to go to a jury. We agree that there is no sufficient evidence of the resultant severe emotional distress. However, that specific basis for taking the case from the jury was not argued to the trial court and we therefore decline to reverse the court on that basis. This brings us to a consideration of the evidence concerning defendants' conduct. It is only by proof of conduct that is "beyond the limits of social toleration" that plaintiff may recover in an action for outrageous conduct, no matter what defendants may have intended and no matter what the effect on plaintiff may have been.[8]

With respect to the well-pleaded allegations, the evidence, viewed in the light most favorable to plaintiff, is as follows. Plaintiff enrolled in the communications course on the advice of her friend Pat Osler. She paid $50 and began the course almost immediately. In signing up for the course, plaintiff filled out forms which stated that she was applying for membership in the Church of Scientology and which explained that Scientology was a religion. Because she was 17 years old at the time, she was required to get permission from her mother to take the course and did so. Plaintiff did not pay any attention to the explanations of the religious nature of the courses because she was told that she had to fill out the forms in order to be allowed to take the communications course, and that was all she was interested in.

Plaintiff found a job working full-time in an engineering office in Portland and was living with a non-Scientologist roommate. She testified that she would go to work until 5 p. m. or 6 p. m. and then attend class every evening from about 7 p. m. until between 10 p. m. and midnight. She also attended class at least one full day, and often both days, on weekends. This schedule continued from July 13, when she began the communications course, until the beginning of October, when she moved to Delphian. At the same time, plaintiff maintained contact with family members and friends in the Portland area, visiting them a number of times and corresponding regularly with her mother.

The communications course in which plaintiff first enrolled consisted of a set of "drills" which were practiced on an individual basis with a supervisor. As part of each drill plaintiff would read bulletins which described the theory of the particular drill to be undertaken. She was then "checked out" on that information to be certain that she understood what she had read. Then she would practice the drill "to a win," that is, until she could complete the drill as prescribed. After completing each of eight drills, plaintiff repeated each on a more difficult level until a final pass was achieved.

The drills were described by plaintiff at trial. The first drill involved reading a bulletin entitled "How to Study" and being checked out on it. The second drill involved reading the prescribed bulletin and then sitting across from another person with eyes closed and attempting to clear her mind of all thoughts and to eliminate all outside influences or distractions. She testified that she practiced this drill for "a couple of hours" before her supervisor indicated that she had completed it to a win. The third drill involved the same procedure, except that she sat across from her supervisor with her eyes open.

The fourth drill is called "bullbaiting." Plaintiff described it as follows:

> "* * * You're sitting with your eyes open facing another person. The other person, while you're sitting there staring at them, tries to distract you by telling you jokes, making fun of you, pointing at

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[8] It may well be that much of the effect on plaintiff that is alleged is not "emotional distress" either, but we need not consider here whether recovery for such effects may be had in an action for outrageous conduct. We note that the misrepresentations which are re-alleged are the same misrepresentations which form the basis for the fraud action. These representations are not separately sufficient to be actionable as outrageous conduct.

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you, touching you, making faces at you, trying anything that they can to make you laugh or twitch or cry or frown—make any sort of acknowledgement that you heard what he said or saw what he did.

"And the objective is to be able to sit there while that person says anything to you and does anything around you without thinking about what they're doing, and without getting mad—making any gestures.

"Q: How was it practiced on you?

"A: Well, first of all they started by just telling me jokes and I like a good joke and I would laugh. And they would say: Flunk, you laughed. And they would start you all over again on the same drill and they would tell the same jokes until they reached a point that you no longer laughed at it.

"They would make fun of me. * * * Well, they teased me about my religion; they teased me about sex; they teased me about my looks. Some of them made gestures toward me like coming up close to me as if they were going to kiss me or touch me. * * * As soon as they found an area that caused me to laugh more or to frown or to cry, they would go into that area in depth and * * * try and get me embarrassed or to cry or make some sort of reaction.

"Q: Did they use obscene words or any foul language?

"A: Yes, they did. I was embarrassed by obscene words and they used obscene words a lot. Every obscene word that I ever heard was used.

"Q: Were you reduced to tears?

"A: Yes, I was, at times.

"Q: How long did the bullbaiting thing go on?

"A: I was bullbaited several different times during the communications course, through three weeks."

After plaintiff was able to complete the bullbaiting drill, she participated in teaching it to other people.[9]

The next drill required that plaintiff read sentences from Lewis Carroll's *Alice in Wonderland* and *Through the Looking Glass* until she was able to read without any inflection. After that drill plaintiff participated in a drill which was described as "learning to acknowledge someone."

"And in that drill the person that's acting as coach would * * * ask you a question and all you were supposed to do is acknowledge them by saying: 'Good,' or 'Yes.' And you weren't supposed to put again any inflection in your voice. You were supposed to just say it. * * * There was no specific meaning to it or anything; just to get the person to know that you heard what they said.

"Q: What type of questions were asked?

"A: There were two questions; one was * * * I don't think they were all questions. I think the person just read phrases out of the books 'Through the Looking Glass' and 'Alice in Wonderland.'"

The next drill was learning how to receive an acknowledgment from a person.

"And what that was there were two questions. The first one was 'do fish swim' and the second one was 'do birds fly.' * * * [Y]ou sat across from the coach and you say to him: Do fish swim. And the coach tries to ignore you and you try to say it in as much of a forceful manner that you get an acknowledgement from him. And he will sit there and laugh at what you're doing, or totally ignore you. And you're supposed to just sit there and stare right at him and clear your head of all thoughts and ask him this question with such force that he feels he has to answer you.

"And then, as another step up from that same drill, the coach, instead of just ignoring you or laughing, will begin to make remarks just like in the bullbaiting drill. You will say: Do birds fly. He will say: I don't know, what do you think. And then you're supposed to just repeat the question 'Do birds fly' until you get him to answer. And he will—sometimes the person will say that they have a headache or that they want a drink of water and you're supposed to say—you're supposed to get them to forget that they have a headache or that they need something and to answer your question for you."

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[9] There was other testimony regarding the experiences of others in bullbaiting on other occasions when plaintiff was not present. However, in considering defendants' conduct toward this plaintiff, we consider as relevant only what plaintiff experienced.

Plaintiff's memory was not clear on four further drills, called "upper indoctrination" drills. One involved reading a bulletin entitled "What is Control," which plaintiff remembered as "telling you how to control people and how to achieve the response and the actions that you want to achieve from the other person." Another involved learning commands, such as "Look at the wall, walk over to that wall, touch that wall, turn around." In another drill,

> "* * * you give a command to [an] ashtray as you hold it in front of you. I can't remember what the commands were, but they were something like * * * 'Rise up,' or something. And you raise the ashtray up and you do this drill over and over until you are convinced that you have told the ashtray to move and it has moved."[10]

Plaintiff completed the communications course in about one month. However, on July 25, 1975, less than two weeks after she started that course, she signed up for another, known as the Student HAT course, for which she paid $250 to the Mission. While she was taking the communications course she was also approached by the Mission staff about receiving "auditing," for which certain claims were made that are included among the misrepresentations alleged in the fraud action. When she was approached about "auditing" by a staff member, he told her everyone has "hang-ups" that inhibit communication and asked if she would like to get rid of all of her hangups and improve herself. Plaintiff signed up for auditing because the staff member told her it was the best thing she could do for herself, she was convinced that it was, and she wanted to develop herself to her fullest potential. On July 26, plaintiff paid $780 and on July 31, she paid an additional $1100 for a number of hours of auditing.

Because she did not have the money to pay for the hours of auditing she was told she would need, plaintiff was coached by Mission staff members to borrow money from friends and family. The staff members helped her to call people and ask to borrow money. A staff member would tell her the type of conversation to use and sit there while she called, giving her ideas and suggestions. In the evenings when she went to the Mission she would take courses for a while and then be asked to come to a staff member's office to make phone calls. She borrowed $700–800 from friends and family and another $500 from Freedom Federal Credit Union, which is operated by Scientologists.

Plaintiff began the Student HAT course and the auditing right after completing the communications course, approximately in mid-August. She took the course on weekends and participated in auditing in the evenings during the week. As explained above, the purpose of auditing is claimed to be to relieve the negative effects of past experiences. This is accomplished by the use of an "E-meter," which is a crude galvanometer. The individual receiving the auditing holds what are described as two tin cans, one in each hand. The cans are connected to a device which has a needle which reacts in some manner to the responses made.[11]

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[10] There was some other testimony concerning the type of activities involved in the "upper indoctrination" drills. Although somewhat more detailed, it is substantially the same as plaintiff's descriptions.

[11] The E-meter was described in *United States v. Article or Device, etc.*, 333 F.Supp. 357 (D.D.C.1971):

> "The E-meter is essentially a simple galvanometer using two tin cans as electrodes. It is crude, battery-powered, and designed to measure electrical skin resistance. It is com-

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Plaintiff testified that the auditor would ask a question, such as "Do you have any problems with your parents?" She would describe a particular argument, and he would ask if there were earlier, similar times she had had arguments with her parents. She testified that he would take her back earlier and earlier until he decided she had related the earliest incident and her "needle was floating." The auditor would then go on to another question.

The time spent on auditing varied. Plaintiff testified:

> "I spent at least two hours, and often as many as five or six hours in auditing. If a point was reached, after a couple of hours, where I was pretty happy, then the auditor would end the session. But if during the course of the questions he asked me, I became very upset and cried or wouldn't answer his questions, he would keep asking me questions over and over again until I reached a point where he felt it was safe to end the session.
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> "There was a rule that in auditing that the auditor could never let the person leave when they were upset. And so I remember a number of times that I became real upset and just wanted to leave and go home and get out of the place, but he said: No, just sit down. The way out is the way through, was the phrase he used. What upsets you the most by talking about it more with me will help you overcome it."

The Student HAT course involved listening to tapes of lectures by L. Ron Hubbard, the founder of Scientology, and reading various bulletins, after which plaintiff would be examined to determine whether she knew the material contained in each one. These materials concerned proper study habits and methods and the values of auditing.

In conjunction with the Student HAT course, plaintiff attended Friday evening "musters," which all students in the communication course and the Student HAT course were required to attend. According to plaintiff, the purpose of these meetings was "to discuss our progress on the course and reinforce one another, telling each other how many points we had made." [12] She described the musters as follows:

> "Well, I would go into the graduation room and be seated and then someone would come in that was officiating that night. And it varied, like the person would come in and usually do something to get everybody to relax. One of the most common things they did was to say: I want everybody in here to introduce themself to two people in the room that they have never met before. And then the people would do that and they would be relaxed and then he would start talking about Scientology and Dianetics and communications course and all of these things and how we were all going to become part of clearing the planet or making sure that everyone on the planet got Dianetic auditing.
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> "Sometimes they did little drills like: Once a person asked us to locate a space around us that we would call ours and then everyone would sit there and do that. And he would say: Now increase that space—increase that space to include you and two people beside you, and you do that. And then he would say: Increase the space to include this room, and we did that.
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> "He would say: Increase the space to include the whole world, and you just bodily increased it to that spot. And he said: See what it is going to be like. We are going to increase ourselves until we get everyone on this planet clear."

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pletely harmless and ineffective in itself. A person using the meter for treatment holds the tin cans in his hands during an interview with the operator who is known as an auditor and who purports to read indicators from the galvanometer needle as it notes reactions to questions. * * *"

[12] The students received points for what they learned in the courses, and a charting system was maintained in which each student's points were recorded to show his or her progress in Scientology.

The graduates of the courses would stand up and tell the group what they had gained from the course. They would

> " * * * say how it had changed their lives and how they were—they had finally found meaning and finally found a way to improve themselves and rid themselves of their harmful past, emotions and attitudes."

Around the end of August or the beginning of September, staff members at the Mission began to talk to plaintiff about becoming a staff member. They told her how rewarding it was, and they began to talk about Delphian. Certain of the claims made for Delphian are included as misrepresentations alleged in the fraud count. According to plaintiff's testimony, she was told that she could take courses at Delphian which could be applied toward a college degree, that she would learn about architecture and engineering "from the ground up" and that Delphian was partially funded by government grants for doing research in solar and wind energy and recycling. Plaintiff decided that going to Delphian would be the best way to combine her interests in architecture and engineering with her interest in Scientology and Dianetics. She informed her parents that she would not be going to college that fall as she had planned; instead, she applied to Delphian as a provisional staff member. After visiting her parents' home in Montana in September, she moved to Delphian at the beginning of October.

Plaintiff was assigned to live in a room with two other women and two children. She had a small space for her belongings. She worked harvesting crops for a couple of weeks after she arrived and then helped to move an old garbage dump on the property. In the evenings, she worked indoors cleaning floors, washing dishes and other such tasks. Her work day extended from 8:30 a. m. to 11 p. m. or later. After three or four weeks, she was assigned to care for small children of other staff members. She was given instructions on using Scientology methods in caring for the children. She worked as a "nanny" until she left Delphian. She received wages of a few dollars a week.

Visitors were not encouraged at Delphian, and plaintiff was instructed that two-weeks notice was necessary if visitors were coming. She described one incident that occurred around Halloween when she was reprimanded because her mother and one of her friends from Montana came to visit unannounced. Plaintiff's mail was sometimes opened before she received it at Delphian.

Beginning in October and continuing into November, plaintiff reported to Delphian staff members that her mother was very concerned about her involvement with Scientology. She had been told that she must report that kind of activity, because if it was upsetting to her it would inhibit her progress in Scientology. Plaintiff eventually became aware that her mother had hired a lawyer to find a way to get her away from Delphian. She informed the staff of this action and that her mother had also gone to the media.

Plaintiff was told that this kind of activity was bad for Scientology and that it would give Delphian and Scientology a bad reputation. She was told that she would have to leave Delphian until she could "handle" her parents, which meant that she must convince them to sign a statement that they would not sue, attack or embarrass Scientology or Delphian.

Plaintiff left Delphian in late November or early December and returned to Portland. She began working as a waitress in an hotel and lived in a house with several other people, including her friend Osler, who had also been at Delphian during the time plaintiff was there and had left when she did. Plaintiff went to the Mission and saw staff member Jim Brooks, who was to help her handle her parents. She was told that she could not take any classes or auditing until she could handle them. She was informed that in order to continue in Scientology she had to handle her parents or "disconnect," *i.e.*, cut off all relations with them.

Brooks coached her on what to say in letters to her parents to convince them to allow her to continue in Scientology without interference. Plaintiff obtained permission from Brooks to go home for Christmas to attempt to handle her parents. She rode home with her brother, who lived near Portland. Her parents would not agree to plaintiff's requests, and plaintiff returned to Portland with Osler.

Under the direction of Brooks, plaintiff wrote her parents a letter on January 5, 1976, informing them that she was no longer involved with Scientology. Although that was not true, Brooks told her it would help her family "destimulate." She continued to report her parents' activities to Brooks, including an unsuccessful attempt to hold plaintiff in an hotel for "deprogramming." Brooks coached plaintiff in writing letters to her parents, either asking that they not interfere with her involvement in Scientology or "good road, fair weather" letters avoiding the subject of Scientology.

Plaintiff also met with Kay Wilson from COSOP, who told her that if she wanted to continue in Scientology she would have to disconnect from her parents. Regarding that conversation, plaintiff testified:

> "We were discussing my mother and I told Kay Wilson that my mother had hired an attorney and that she had told me all these things about Scientology I had never heard about. My mother mentioned something about a Fair Game Law and I said that to Kay Wilson. And she said: Oh, that policy letter has been cancelled. However, the treatment of suppressive persons is still the same."

A "suppressive person" is one who attempts to damage or interfere with Scientology. The Fair Game policy was proclaimed by L. Ron Hubbard in a policy letter of October 18, 1967. It stated that suppressive persons "[m]ay be deprived of property or injured by any means by any Scientologist without any discipline of the Scientologist. May be tricked, sued, lied to or destroyed."[13] Plaintiff testified that she had been shown several policy letters regarding treatment of "suppressive persons." Plaintiff had been told that her mother was suppressive.

Plaintiff did not want to disconnect from her parents, but she did want to continue in Scientology. She asked for permission from Brooks to go back to Montana to persuade her parents to agree not to sue, attack or embarrass Scientology and not to interfere with her involvement in it. She made the trip in April, 1976. When she arrived at her parents' home, she was locked in the house and "deprogrammed." As a result, plaintiff decided that she did not want to return to her involvement in Scientology, and she did not.

[3] Whether viewed as individual acts or taken together as a "scheme," we find nothing in this record which constitutes conduct which is "beyond the limits of social toleration." There is no evidence that plaintiff was threatened or forced to remain involved in Scientology. To the contrary, she maintained many contacts with non-Scientologists. She had a full-time job both before and after her stay at Delphian. The record shows that she visited with relatives living in the Portland area periodically while she was there. She maintained correspondence with her parents and went back to Montana twice before her visit in April when she was "deprogrammed." Her parents or her mother visited her several times in Portland or at Delphian. Plaintiff became involved and maintained her involvement because she desired to do so. If misrepresentations were made regarding the benefits or the nature of Scientology which gave rise to that desire, her remedy would be for fraud, not outrageous conduct.

Plaintiff was recruited and indoctrinated into the Church of Scientology. That recruitment and indoctrination, as far as this record discloses, were not so very different than might be used by any number of organizations. She joined the group voluntarily, albeit, as she claims, on the basis of misrepresentations made to her. However, she continued to participate and maintained her involvement for whatever reason without actionable threats or coercion by defendants.

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[13] Defendants maintain that this policy had been cancelled. There was conflicting evidence as to the status of the policy and its meaning. We need not resolve those conflicts because the mere existence of the policy does not constitute outrageous conduct as to this plaintiff.

The drills plaintiff was subjected to as part of the communications course she initially signed up for were not in themselves outrageous. Plaintiff studied the theory behind each drill before participating in it. She returned day after day to participate in the course, although she had daily contact with non-Scientologists in her job and at her apartment with her non-Scientologist roommate. The most that can be said is that plaintiff was convinced by defendants to accept what they were teaching; unless the means involved more than persuasion, that is not outrageous. Whether or not we find any merit to defendants' teachings, plaintiff apparently did find merit in them during the time she was associated with Scientology. The fact that she was later convinced of their invalidity does not make defendants' conduct outrageous *post hoc*.

The only evidence which supports the allegation that plaintiff was caused "to believe and fear that she would be subject to severe punishment should she ever bring suit against Defendants, voice her disapproval of Defendants' practices, testify against Defendants, demand a return of money from Defendants or commit any other act Defendants determined to be against their interests" is the testimony regarding the Fair Game policy. Plaintiff testified that *after* she was "deprogrammed" she was fearful of retaliation by defendants. There is no evidence that *during* her association with Scientology plaintiff was afraid to terminate her involvement or feared defendants in any way. The fact that she was informed of a policy known as Fair Game is not outrageous conduct.

We hold that the evidence presented under Count I of the outrageous conduct cause of action does not, as a matter of law, establish conduct that is outrageous in the extreme or beyond the limits of social toleration.

[4] Count II of the outrageous conduct action[14] alleges that:

> "Subsequent to Plaintiff's deprogramming, Defendants have pursued a course of conduct against Plaintiff that is designed to threaten, humiliate, and intimidate Plaintiff and cause her fear, anguish and mental distress. Defendants on June 7, 1977, filed suit against Plaintiff without cause and for the purpose of intimidating Plaintiff; Defendants have, in June of 1976 and April of 1977, declared Plaintiff to be a suppressive person subject to Defendants continuing 'fair game' policy of retribution which directs Defendants' organizations and other Scientology organizations and their members to trick, lie to or destroy Plaintiff. Defendants have, beginning in June of 1976 and continuing to the present, forbid, through threats of mental and physical harm, any friends of Plaintiff connected with Defendants from communicating with Plaintiff; Defendants have caused and continue to cause the mailing of materials to Plaintiff and Plaintiff's family subsequent to Plaintiff's request that such mailings cease."

Defendants moved for a directed verdict on this count as well, on the basis that the conduct proved was not such that it could subject them to liability.

The evidence established, first, that a libel action was filed by certain of the defendants against plaintiff after a press conference in which plaintiff participated. That matter was still pending at the time of the trial of this action. We said in *Erlandson v. Pullen*, 45 Or.App. 467, 472, 608 P.2d 1169 (1980):

> "Without necessarily suggesting that it could never be so, we note that it would be a rare case in which the bringing of a

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[14] This count was withdrawn as to defendant Delphian at the close of the evidence. COSOP and defendant Samuels contend that no involvement by them was shown. Because of our disposition of this count on other grounds, we need not reach that issue. We use the term "defendants" here without delineating whose involvement was shown.

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> lawsuit would fit the definition of outrageous conduct. This tort has been reserved for 'intentional acts of a flagrant character under most unusual facts and circumstances * * *.' *Melton v. Selen,* 282 Or. 731, 736, 580 P.2d 1019 (1978)."

Here the record reveals nothing about the other case except that it was an action for libel. We do not know, nor can we infer from this record, that it was without foundation. Such proof would not even support an action for abuse of process without evidence that plaintiff had prevailed. *Erlandson v. Pullen, supra.* Filing such a suit is not outrageous conduct.

There is evidence that plaintiff was declared a suppressive person by certain individuals connected with the Mission. Plaintiff testified at trial that she knew she had been declared suppressive because that is what is done. At her deposition, she testified that someone had told her that she had been declared suppressive. However, there is no evidence that *defendants* informed plaintiff that she was declared suppressive and subject to the Fair Game policy, or knew or intended that she be so informed.[15]

The only evidence that defendants forbade, "through threats of mental and physical harm, any friends of Plaintiff connected with Defendants from communicating with Plaintiff" is a document issued June 7, 1976:

> "All staff are hereby notified not to attempt to contact or interfere with JULIE CHRISTOFFERSON or PATRICK OSLER in any manner. These two persons have attacked the Church of Scientology so I repeat, they are not to be communicated to for any reason.
>
> "If either of these two contact any one in the Church, or if any associates of theirs try to contact any one of the Church, report this action * * * immediately."

This directive followed a letter sent on June 6, 1976, by an attorney on behalf of plaintiff and Osler. That letter said:

> "This office represents Julie Christofferson and Patrick Osler, formerly members of your group. Enclosed are photocopies of affidavits to the effect that they have both been deprogrammed, and that they request legal assistance should you make any effort to induce them back into the cult. Naturally, a large civil action would be an expected element of any such legal assistance. Therefore you are hereby on notice that any attempt to contact them, or to interfere with them in any manner, will result in most grave consequences to you."

In addition, a former staff member of the Mission testified that they were told at a staff meeting not to communicate or associate with plaintiff or Osler under any conditions, or if they did so, to write it up immediately.

Following, as the directive had, the letter from plaintiff's attorney demanding that defendants not contact plaintiff in any way, the orders that plaintiff's demand be met can in no way be considered outrageous conduct. There is no evidence that any threats of mental or physical harm were made to enforce the prohibition on contact with plaintiff.

The mailings of which plaintiff complains were, with one exception, from the American Saint Hill Foundation (known as ASHO) in California, a Scientology organization. Several personal letters to plaintiff, signed by individuals she did not know, asked about her progress in Scientology. Some of those letters contained brochures on Scientology. In addition, two editions of a newsletter entitled *Cause,* also published by ASHO, were received by plaintiff. Finally, plaintiff received one form letter with brochures from COSOP. Plaintiff does not seem to contend that the contents of the letters were offensive, but she testified that she was made fearful by the fact that she received mail from Scientology organizations at all. Certain of the mailings were addressed to plaintiff's last Portland address and were forwarded to her in Montana. Others were addressed to the post office box which was her Eureka, Montana, address.

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[15] At her deposition, plaintiff testified that she did not know whether she had been declared suppressive. Later, however, she said she had been told by someone that she had been declared suppressive. She stated that she could not remember who had told her, but thought it was someone who left Scientology after she did.

Mailing letters, brochures on Scientology and a newsletter which were in themselves innocuous cannot constitute outrageous conduct. There was nothing sinister in any of the material plaintiff received. Neither was there anything mysterious about the fact that plaintiff's forwarding address was obtained, for it is clear that certain of the items were forwarded by the post office and that the envelopes contained an "address correction requested" imprint.

In addition to what was alleged in her complaint, plaintiff also presented evidence at trial, without an objection that it was outside the scope of the pleadings, of three incidents which made her fearful. Once, a couple of months after she left Scientology, she was in Portland and was walking down the street with Osler near the house in which she was staying. They noticed a car parked about a block from the house, and Osler recognized the person in the car as a Scientologist. They walked up to the car and asked the person what he was doing. He did not answer but started the car and drove away. Later that afternoon plaintiff noticed a van parked about a block from the house and, as they approached the van, it drove away. Osler recognized the person driving as a Scientologist.

Finally, in June, 1976, plaintiff and Osler were out walking and noticed two Scientologists behind them. They walked into the library and were followed into one of the library rooms. There the two Scientologists sat down at a table and stared at them while they looked at books. When they started to leave, the Scientologists got up, but plaintiff and Osler left quickly and did not see them after that. These three incidents, either singly or taken as a group, cannot conceivably be called outrageous conduct.

We have reviewed the record as it relates to the conduct which plaintiff claims to be outrageous. We recognize that plaintiff does not claim that any particular action, by itself, would constitute outrageous conduct, but rather contends that the actions together rise to the level of actionable conduct. We find as a matter of law that the conduct shown is not actionable as outrageous conduct, whether viewed as individual acts or as a course of conduct. Defendants' motions for directed verdicts on the cause of action for outrageous conduct should have been granted.

FRAUD

We turn to plaintiff's cause of action for fraud. Plaintiff's complaint contained the following allegations:

> "VII
>
> "Between July, 1975 and April, 1976, in Oregon Defendants Church of Scientology, Mission of Davis, Church of Scientology, Portland, and the Delphian Foundation made the following misrepresentations regarding the standard, quality, grade, sponsorship, status, characteristics, ingredients, uses, benefits, character or qualities of the courses or goods offered by Defendants when they knew or should have known that such representations were false:
>
> "STUDENT HAT AND COMMUNICATIONS COURSE
>
> "(1) * * * the Church of Scientology Communication Course would provide more knowledge of the mind than is possessed by any psychologist or psychiatrist.
>
> "(2) * * * the communication course was completed and endorsed by Father Pat Flanagan of Boys' Town, Omaha, Nebraska. * * *
>
> "(3) * * * the communication course would help the Plaintiff in college work and that the course was offered on a money back guaranteed basis. * * *
>
> "(4) * * * [the] student HAT course enabled a student to understand any subject better and more accurately. * * * the Student HAT Course was offered on a money back guaranteed basis.

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"PLAINTIFF WAS FURTHER INDUCED TO ENGAGE IN A PROGRAM KNOWN AS AUDITING BY THE FOLLOWING REPRESENTATIONS:

"(5) * * * auditing relieves the effects of past experiences. * * * through auditing she would have more knowledge of the mind than any psychiatrist or psychologist and more knowledge of the bodily processes than any doctor.

"* * *.

"(a) Auditing develops creativity;

"(b) Auditing increases I.Q. scores;

"(c) Auditing cures neuroses, criminality, insanity, psychosomatic ills, homosexuality and drug dependence;

"(d) Auditing allows one to control his own emotions and the physical universe; and

"(e) Auditing was offered on a money back guaranteed basis.

"* * *.

"PLAINTIFF WAS INDUCED TO ENGAGE IN THE STUDY OF 'DIANETICS' BY THE FOLLOWING REPRESENTATIONS:

"(8) * * * Dianetics is scientifically provable and that it cures asthma, arthritis, rheumatism, ulcers, toothaches, pneumonia, colds, and color blindness. * * *

"(9) * * * L. Ron Hubbard, the creator of auditing, is an engineer and nuclear physicist and has a degree from Princeton University and an honorary degree from Sequoia University and is a graduate of George Washington University who revealed Dianetics to mankind as a service to humanity, with no intent to profit therefrom. * * *

"(10) * * * L. Ron Hubbard had a civil engineering degree; a 'B.S.' degree and was a nuclear physicist, a graduate of George Washington University; and had received an honorary degree from Sequoia University and Princeton University;

"DEFENDANTS FURTHER INDUCED PLAINTIFF TO QUIT HER JOB AND LIVE AND WORK AT THE DELPHIAN FOUNDATION BY MAKING THE FOLLOWING REPRESENTATIONS:

"(11) * * * Delphian Foundation was funded by government grants for developing education and alternative energy sources: further that Plaintiff could take courses at the Delphian Foundation that could be applied by an accredited college toward a college degree.

"(12) * * * L. Ron Hubbard was a graduate of George Washington University, was an engineer and nuclear physicist and had an honorary degree from Sequoia University and that the Delphian Foundation was nearing accreditation and had almost been accredited in September of 1975; further that in the Spring of 1976 Plaintiff could take courses at the Delphian Foundation that could be applied by an accredited college toward a college degree.

"(13) * * * [Plaintiff] could attend school at the Delphian Foundation and, after such study, be able to obtain college credit hours in architecture or engineering at any college in the country merely by taking a test.

"(14) * * * [Plaintiff] would obtain at the Delphian Foundation an education superior to any University in the world.

"* * * *."[16]

[5] We first consider the motions for directed verdict made by each of the parties on other than constitutional grounds. COSOP moved for a directed verdict on the ground that plaintiff had not shown that any of its agents or employes had made any of the misrepresentations alleged. COSOP argues on appeal that that motion should have been granted.

Plaintiff's complaint alleged that the misrepresentations were made by specific individuals who were agents or employes of the Mission or Delphian. None of the individuals named is claimed to have been an agent or employe of COSOP. The complaint did allege that the misrepresentations were repeated by various employes of defendants and that they were contained in literature provided to plaintiff by COSOP. However, at trial, plaintiff did not introduce any evidence that the statements were made by employes of COSOP or that she was provided with any literature by COSOP.

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[16] Defendants do not argue that these alleged statements may not be fraudulent, at least under some circumstances.

There is evidence that plaintiff paid $75 to COSOP for a "Lifetime HASI" on July 30, 1975. HASI is an acronym for Hubbard Association of Scientology International. HASI membership entitles one to a 10 percent discount on purchases from all Scientology organizations. Plaintiff contends that COSOP may be held liable for the misrepresentations made by employes of the Mission, because it received money from plaintiff while knowing about the fraudulent practices employed by the Mission. She does not contend that actual knowledge was shown, but only that COSOP had constructive knowledge of the marketing practices of the Mission and of the claims that were made for the courses offered.

Assuming without deciding that COSOP could be held liable on such a basis, we find no evidence, nor has plaintiff pointed to any, to indicate that COSOP was aware on July 30, 1975, when plaintiff paid $75 for the HASI membership, that plaintiff had had any contact with the Mission at all. The only evidence regarding the $75 payment to COSOP is a receipt. Plaintiff did not testify to the circumstances surrounding that payment and, in fact, testified mistakenly that she had not paid any money to COSOP. The fact that both COSOP and the Mission are Scientology organizations does not by itself provide a sufficient link to hold COSOP liable for what may have been done by the Mission. Neither does the fact that policy letters and bulletins written by L. Ron Hubbard are espoused by both COSOP and the Mission make COSOP liable to this plaintiff.

Plaintiff has not shown that the Mission acted as an agent for COSOP, nor does she claim that such a relationship existed. She has shown no basis upon which COSOP may be held vicariously liable for the actions of the Mission. We conclude that the motion of COSOP for a directed verdict on plaintiff's action for fraud should have been granted.

[6] Delphian's motion for directed verdict was on the ground that none of the statements alleged by plaintiff were made by any of its agents or employes and that plaintiff had already paid the $3,000 she claims was procured by fraud long before she went to Delphian. Although the complaint alleges that certain of the misrepresentations were made or repeated by employes of Delphian, plaintiff appears to concede in her brief that there is no evidence to support that allegation. Plaintiff argues, however, that Delphian should be held liable because 1) the relationship between the Mission and Delphian was such that Delphian should be held liable; 2) Delphian confirmed certain of the misrepresentations regarding its funding, structure and courses in a data sheet given to plaintiff to read to acquaint her with Delphian when she arrived; and 3) Delphian did receive some money from plaintiff, apparently for books, and also received free labor from plaintiff while she was there.

Plaintiff does not state the theory behind her contention that the relationship between Delphian and the Mission is such that Delphian should be held liable for misrepresentations made by the Mission. The evidence she points to in support of her contention is as follows:

> "* * * Mission of Davis has a branch at Sheridan on the Foundation premises * * *, the management of Mission of Davis is centered at Sheridan * * *, and that Mission of Davis, Delphian Foundation and the Sheridan Mission all co-exist on the same property to such an intertwined extent that a memorandum was necessary to prevent confusion in writing out purchase receipts * * *. The two organizations have a common president, Martin Samuels * * *, who lives at Sheridan * * *.
>
> "Additionally, [the Mission's] representations were not made coincidentally, but as part of a policy calculated to induce

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members who had spent all their available funds for courses in auditing at the Mission, to work at the Delphian Foundation in return for further courses and auditing * * *."

It is not clear whether plaintiff is suggesting that the Mission acted as the agent for Delphian in making the representations or that the two corporations are in reality one entity, *i.e.*, an alter ego theory.[17] The evidence adduced at trial does not support "piercing the corporate veil" so as to permit treating the two corporations as one or as the alter ego of defendant Samuels. The memorandum to which plaintiff refers shows only that the affairs of the corporations were maintained separately. One shared corporate officer and shared facilities are not enough to permit such an approach. *See Howco Leasing Corp. v. Oregon Lumber Export Co.*, 283 Or. 225, 228, 582 P.2d 4 (1978); *Schlecht v. Equitable Builders*, 272 Or. 92, 535 P.2d 86 (1975); *Wakeman v. Paulson*, 257 Or. 542, 480 P.2d 434 (1971); *A. J. Rose & Son, Inc. v. Bd. of Funeral Dir.*, 31 Or.App. 537, 570 P.2d 1008 (1977).[18]

We also find no evidence to support a finding that the Mission was acting as the agent of Delphian in making the alleged misrepresentations.[19] Our responsibility at this stage of the proceedings is to decide whether there is any evidence which would support a reasonable inference of agency between the Mission and Delphian. *Briggs v. Morgan*, 262 Or. 17, 496 P.2d 17 (1972). One essential feature of agency is the right of the principal to control over the agent. "A business organization which operates in its sole and unlimited discretion is not an agent but a principal." *Kuhns et ux. v. State Tax Com.*, 223 Or. 547, 555, 355 P.2d 249 (1960); *and see* Restatement (Second) of Agency §§ 1, 14 (1958). There is nothing in the record before us to support an inference that Delphian had any right to control the actions of the Mission or had actual control over those actions; therefore, there could be no finding of agency.

Plaintiff contends that Delphian may be held liable on the basis of the following statements contained in the data sheet which was given to plaintiff to read when she arrived at Delphian, because these statements "confirmed" the misrepresentations made by the Mission:

> "That some 'external' students be accepted for tuition in accordance with our school and university structure.
>
> * * * *
>
> "That funding shall be by donations and endowments and by grants for specific projects, and that the full definition of allowable income routes be obtained and used.
>
> * * * *
>
> "That apprenticeships be a standard part of any educational program.
>
> * * * *
>
> "That there be a designated faculty, both for primary/secondary school and for the University.
>
> * * * *
>
> "That the formal structure of a university be created and maintained, and a program leading to accreditation be developed.
>
> * * * *
>
> "That special attention be given to the maintenance of ethical relationships and

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[17] Plaintiff's brief responds to Delphian's argument as follows:

> "Defendants' argument presumes, erroneously, that since these misrepresentations were made by someone from 'Mission of Davis' rather than from 'Delphian Foundation,' Delphian is insulated from liability no matter how blatant the misstatements."

Plaintiff then recites the facts quoted above and concludes: "Any claim of no relationship between Mission and Delphian is absurd and contrary to all the evidence." This misses the point—the issue is not whether there was a relationship; the issue is whether that relationship was so close as to give rise to joint or vicarious liability.

[18] Because of our disposition of this issue we need not consider whether the doctrine of "piercing the corporate veil" should be applied differently, or if it may be applied at all, to religious corporations.

[19] Plaintiff does not specifically claim that there was an agency relationship.

exchanges among the dynamics of TDF; this shall be the guiding principle behind decisions as to techniques and orientations in architecture, agriculture, forestry, utilities, etc. * * *"

The statements quoted above are contained under a heading "Policies." Plaintiff does not seem to claim that these are misrepresentations in themselves, and they could not fairly be construed as such. There is no evidence to suggest that they were not the policies of Delphian; neither do the statements show a connection between Delphian and the Mission sufficient to permit a finding of agency or an alter ego situation. They do not aid plaintiff.

Finally, plaintiff argues from the fact that Delphian received some money from plaintiff and also received the benefit of her free labor that Delphian can be held liable for misrepresentations made by the Mission. As with the COSOP motion, we need not decide if that is a viable theory of recovery because, at the close of all the evidence, the trial court struck plaintiff's claim that Delphian had received free labor and was paid money by plaintiff. Plaintiff has not contended here that that was error.

We conclude that there is no basis in this record for holding Delphian liable for any misrepresentations made to plaintiff and that its motion for directed verdict should have been granted.[20]

[7] Defendant Samuels' motion for directed verdict was based on the ground that he had not participated in the alleged fraud and could not be held liable to plaintiff merely because he is the president of the Mission. The Oregon Supreme Court held in *Osborne v. Hay*, 284 Or. 133, 145–46, 585 P.2d 674 (1978), that

> "* * * in order to hold the officer of a corporation personally liable for fraud by an agent or employee of the corporation it is necessary to show that the officer had knowledge of the fraud, either actual or imputed, or that he personally participated in the fraud. *See McFarland v. Carlsbad Sanitorium Co.*, 68 Or. 530, 536–537, 137 P. 209 (1914), and *Hoff v. Peninsula Drainage Dist.*, 172 Or. 630, 643, 143 P.2d 471 (1943)." *And see McDonough v. Jones*, 48 Or.App. 785, 617 P.2d 948 (1980), *rev. den.* 290 Or. 519 (1981).

There is evidence in the record from which a jury could have found that Samuels had knowledge of at least some of the alleged misrepresentations. It was not error to deny his motion for directed verdict on that basis.[21]

The Mission asserted only constitutional grounds for its motion. Not all of the alleged representations are claimed to be religious and therefore the motion was properly denied.[22]

FREE EXERCISE CLAUSE DEFENSE

We now consider the appropriate procedures for dealing with a defense to an action for fraud based on the Free Exercise Clause of the First Amendment.[23] Defend-

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[20] Delphian argues that plaintiff had already paid all the money she claims to have paid before she had any contact with Delphian and that, therefore, there is no causative link between plaintiff's damages and anything Delphian may have done. Plaintiff did buy some books while at Delphian, but it is not clear whether the amount she spent for those books is included in the amount of damages she claims. Plaintiff's complaint claimed that she was induced to pay the defendants $3.000.20. The receipts that plaintiff introduced at trial add up to something more than that figure.

[21] Samuels is alleged to be liable only because he is president of the Mission and Delphian. His liability, therefore, is limited by the liability of the Mission. In the remainder of this opinion the term defendants refers to the Mission and Samuels.

[22] Defendants claim that the statements regarding the communications course, the Student HAT course, Dianetics and auditing are protected. They do not claim that the statements concerning Delphian or the statements regarding Hubbard's educational background are religious.

[23] Defendants rely on both the United States and the Oregon constitutions for their defense. They do not, however, argue that the scope of the Oregon constitution differs materially from that of the federal constitution and, therefore, we refer only to the First Amendment of the federal constitution in discussing this defense.

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ants made a pretrial motion to exclude from the trial "any evidence regarding the validity or sincerity of defendants' religious beliefs and practices." In the alternative, they asked for a hearing

> " * * * to determine whether the courses, training, studies, and counseling constitute a part of the religious beliefs and practices of defendants' religious organizations and are thus protected from inquiry as to their validity or sincerity by the Oregon and United States constitutions and applicable law interpretive thereof."

That motion was denied. At the close of the evidence, defendants moved to strike on various grounds certain of the specifications of fraudulent statements. As part of that motion, defendants moved to strike and withdraw from the jury all allegations regarding the communications course, the Student HAT course, auditing and Dianetics on the ground that they constitute religious practices of the defendants. That motion was also denied. Defendants assign error to the denial of both motions. As we will explain hereafter, the pretrial motion was premature, but the motion at the close of all the evidence properly presented the question for the trial court's consideration.

[8] A defense based on the Free Exercise Clause presents particular difficulties in an action for fraud. To establish fraud, a plaintiff must ordinarily prove that the representations made were false. See *Meader v. Francis Ford, Inc.*, 286 Or. 451, 595 P.2d 480 (1979). However, when religious beliefs and doctrines are involved, the truth or falsity of such religious beliefs or doctrines may not be submitted for determination by a jury. See *United States v. Ballard*, 322 U.S. 78, 64 S.Ct. 882, 88 L.Ed. 1148 (1944). The Supreme Court there stated:

> " * * * Freedom of thought, which includes freedom of religious belief, is basic in a society of free men. *Board of Education v. Barnette*, 319 U.S. 624 [63 S.Ct. 1178, 87 L.Ed. 1628]. It embraces the right to maintain theories of life and of death and of the hereafter which are rank heresy to followers of the orthodox faiths. Heresy trials are foreign to our Constitution. Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs. Religious experiences which are as real as life to some may be incomprehensible to others. Yet the fact that they may be beyond the ken of mortals does not mean that they can be made suspect before the law. Many take their gospel from the New Testament. But it would hardly be supposed that they could be tried before a jury charged with the duty of determining whether those teachings contained false representations. The miracles of the New Testament, the Divinity of Christ, life after death, the power of prayer are deep in the religious convictions of many. If one could be sent to jail because a jury in a hostile environment found those teachings false, little indeed would be left of religious freedom. The Fathers of the Constitution were not unaware of the varied and extreme views of religious sects, of the violence of disagreement among them, and of the lack of any one religious creed on which all men would agree. They fashioned a charter of government which envisaged the widest possible toleration of conflicting views. Man's relation to his God was made no concern of the state. He was granted the right to worship as he pleased and to answer to no man for the verity of his religious views. The religious views espoused by respondents might seem incredible, if not preposterous, to most people. But if those doctrines are subject to trial before a jury charged with finding their truth or falsity, then the same can be done with the religious beliefs of any sect. When the triers of fact undertake the task, they enter a forbidden domain. The First Amendment does not select any one group or any one type of religion for preferred treatment. It puts them all in that position. *Murdock v. Pennsylvania*, 319 U.S. 105 [63 S.Ct. 870, 87 L.Ed. 1292].

As stated in *Davis v. Beason,* 133 U.S. 333, 342 [10 S.Ct. 299, 300, 33 L.Ed. 637], 'With man's relations to his Maker and the obligations he may think they impose, and the manner in which an expression shall be made by him of his belief on those subjects, no interference can be permitted, provided always the laws of society, designed to secure its peace and prosperity, and the morals of its people, are not interfered with.'" 322 U.S. at 86–87, 64 S.Ct. at 886–887.

Defendants here were asking by both motions that the trial court determine which of the alleged misrepresentations were religious and withdraw from the jury the issue of the truth or falsity of those statements. Rather than make that determination, the trial court submitted to the jury the question of whether the statements were religious, with instructions that it was not to determine the truth or falsity of any statements it found to be religious.[24]

Defendants and amici argue that it is the responsibility of the trial court to determine in the first instance the religious character of statements alleged to be fraudulent and that, if it is determined that the statements relate to religious beliefs or practices, further inquiry is forbidden. They argue that submission of the question to a jury makes the determination one that is not reviewable after a general verdict, leaving the possibility that a defendant's adherence to unpopular or unorthodox religious beliefs could be made the basis for liability. Plaintiff argues, on the other hand, that it is appropriate for the trial court to determine which statements are religious only if it can do so as a matter of law. She contends that, if the determination requires resolution of questions of fact, that resolution is for the jury. Plaintiff further contends that the courses and practices in which she participated were held out to her as secular and that she therefore is entitled to have a jury consider the allegedly fraudulent statements, because they were not religious in the context in which they were made.

Courts have had little occasion to consider the application of a Free Exercise Clause defense in an action for fraud in a jury trial. By far the majority of the cases in this area have been non-jury cases. We have found no cases which have considered this specific issue, and none have been cited to us. In fact, there has been little discussion in even a general way of whether an action or statement is religious is a question of law or of fact. In practice, the issue has been treated as one of fact by many courts, without discussion. *See, e.g., Fiedler v. Marumsco Christian Sch.,* 631 F.2d 1144 (4th Cir. 1980); *Brown v. Dade Christian Schools, Inc.,* 556 F.2d 310 (5th Cir. 1977); *United States v. Carroll,* 567 F.2d 955 (10th Cir. 1977), *but see United States v. Silberman,* 464 F.Supp. 866 (M.D. Fla.1979); *People v. Mullins,* 50 Cal.App.3d 61, 123 Cal. Rptr. 201 (1975).

In *Founding Church of Scientology v. United States,* 409 F.2d 1146 (D.C.Cir.1969), a false labeling case, the court directed that, if a new trial were to follow its remand of the case to district court,

> " * * * it is incumbent on the trial judge to rule in the first instance whether each item of alleged false labeling makes religious claims and hence cannot be submitted to the jury for the factual determination of whether it is a label for the device in question and whether it is false." (Footnote omitted.) 409 F.2d at 1165.

On remand, the district court interpreted this admonition to mean that the trial court should remove from the jury's consideration only those items which made "purely religious" appeals,

> " * * * reserving a presentation of the other literature for determination under instructions differentiating the secular from the religious." *United States v. Ar-*

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[24] Defendants also assign error to the instruction given on the Free Exercise defense and to the failure of the trial court to give certain requested instructions. We consider those assignments *infra.*

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ticle or Device, Etc., 333 F.Supp. 357, 361 (D.D.C.1971).

We agree with and adopt this approach.[25]

[9] The jury is the usual trier of fact in tort cases such as the one before us. Disputes in the evidence should be resolved by the trier of fact. We conclude that the trial court was required to determine the religious character of the alleged misrepresentations only if it could do so as a matter of law, that is, if there was only one conclusion to be drawn from the evidence. We now turn to that question.

The fundamental qualification for protection based on the Free Exercise Clause of the First Amendment is that that which is sought to be protected must be "religious." *Wisconsin v. Yoder*, 406 U.S. 205, 215–16, 92 S.Ct. 1526, 1533, 32 L.Ed.2d 15 (1972). The Mission claims that Scientology is a religion and that statements regarding its beliefs and practices are protected.[26] Plaintiff does not contend that Scientology is *not* a religion, but instead concentrates on the particular representations at issue. She contends that those representations are not religious statements, no matter what the status of Scientology, and that the statements are therefore not protected by the First Amendment.

Plaintiff's approach to this case has been to treat the alleged statements by defendants *in vacuo*, but we do not believe that it is constitutionally permissible to approach them that way. In this case, the issue of whether the allegedly fraudulent statements are entitled to the protection of the First Amendment involves several questions. Statements made by religious bodies must be viewed in the light of the doctrines of that religion. Courts may not sift through the teachings of a religion and pick out individual statements for scrutiny, deciding whether each standing alone is religious. While plaintiff has skipped past the issue of whether Scientology is a religion, we do not believe we can do so, because the answer to that question is pertinent to, although not dispositive of, the determination of whether the statements made by the agents of the Mission are religious.

The Supreme Court stated in *Wisconsin v. Yoder, supra*,

> "* * * Although a determination of what is a 'religious' belief or practice entitled to constitutional protection may present a most delicate question, the very concept of ordered liberty precludes allowing every person to make his own standards on matters of conduct in which society as a whole has important interests." 406 U.S. at 215–16, 92 S.Ct. at 1533. (Footnote omitted.)

And, as noted by the court in *Founding Church of Scientology v. United States, supra*:

> "* * * Though litigation of the question whether a given group or set of beliefs is or is not religious is a delicate business, our legal system sometimes requires it so that secular enterprises may not unjustly enjoy the immunities granted to the sacred. When tax exemptions are granted to churches, litigation concerning what is or is not a church will follow. When exemption from military service is granted to those who object on religious grounds, there is similar litigation. When otherwise proscribed substances are permitted to be used for purposes of worship, worship must be defined. The law has provided doctrines and definitions, unsatisfactory as they may be, to deal with such disputes. * * *" 409 F.2d 1160.

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[25] Although in *Wisconsin v. Yoder*, 406 U.S. 205, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972), the Supreme Court seemed to undertake to determine on its own, from the record in the case, whether the Amish parents who refused to send their children to secondary school were acting on the basis of religious conviction, 406 U.S. at 215-16, 92 S.Ct. at 1533, the good faith religious belief of the parents was not questioned by the state. There was no fact dispute to be resolved.

[26] Because defendant Samuels is only sought to be held liable only as president of the Mission, we look to the protection afforded the Mission. Samuels may be held only to the extent the Mission is liable.

[10, 11] Without attempting an "unprecedented definition of religion," *Malnak v. Yogi,* 440 F.Supp. 1284, 1320 (D.N.J.1977), *aff'd,* 592 F.2d 197 (3d Cir. 1979), we draw guidance from the case law. We find that, while beliefs relating to the existence of, and man's relationship to, a God are certainly religious, belief in a traditional, or any, "god" is not a prerequisite to a finding that a belief is religious. *Torcaso v. Watkins,* 367 U.S. 488, 81 S.Ct. 1680, 6 L.Ed.2d 982 (1961); *Everson v. Board of Education,* 330 U.S. 1, 67 S.Ct. 504, 91 L.Ed. 711, 168 A.L.R. 1392 (1947); *Washington Ethical Soc. v. District of Columbia,* 249 F.2d 127 (D.C.Cir.1957); *Malnak v. Yogi, supra; Fellowship of Humanity v. County of Alameda,* 153 Cal.App.2d 673, 315 P.2d 394 (1957). Neither does the fact that Scientology is of relatively recent origin mean that it is not entitled to the protection of the First Amendment. *See Loney v. Scurr,* 474 F.Supp. 1186 (S.D.Iowa 1979); *Malnak v. Yogi, supra; Remmers v. Brewer,* 361 F.Supp. 537 (S.D.Iowa 1973); *see also United States v. Ballard, supra; Founding Church of Scientology v. United States, supra.* On the other hand,

> "[a] way of life, however, virtuous and admirable, [is not entitled to First Amendment protection] if based on purely secular considerations.
>
> "* * *
>
> "Thus, if the Amish asserted their claims because of their subjective evaluation and rejection of contemporary secular values accepted by the majority, much as Thoreau rejected the social values of his time and isolated himself at Walden Pond, their claims would not rest on a religious basis. Thoreau's choice was philosophical and personal rather than religious, and such belief does not rise to the demands of the Religion Clauses."

Wisconsin v. Yoder, supra, 406 U.S. at 215–16, 92 S.Ct. at 1533; *see also, United States v. Seeger,* 380 U.S. 163, 176, 85 S.Ct. 850, 859, 13 L.Ed.2d 733 (1965); and *see Welsh v. United States,* 398 U.S. 333, 90 S.Ct. 1792, 26 L.Ed.2d 308 (1970).

Courts may not, of course, judge the "truth" or "falsity" of the beliefs espoused by a group in determining its status as a religion: the inquiry here is simply whether the teachings of Scientology are of the type that qualify for the protection of the Free Exercise Clause. The record in this case demonstrates indisputably that they are. Although certain of the theories espoused by Scientology appear to be more psychological than religious, we cannot dissect the body of beliefs into individual components. It seems clear that if defendants sought to teach Scientology in the public schools in this country, they would be prohibited from doing so by reason of the Establishment Clause of the First Amendment. *See Malnak v. Yogi, supra; Epperson v. Arkansas,* 393 U.S. 97, 89 S.Ct. 266, 21 L.Ed.2d 228 (1968). The theories of Hubbard are interrelated and involve a theory of the nature of the person and of the individual's relationship with the universe. *See Founding Church of Scientology v. United States,* 409 F.2d at 1160.

[12] The Mission is incorporated as a tax-exempt religious organization; it has ordained ministers and characterizes itself as a church. It has a system of beliefs, or creed, which encompasses beliefs which are religious in character. We conclude that Scientology is a religion and that the Mission is a religious organization entitled to invoke the protection of the Free Exercise Clause.

[13] The second inquiry to be made in determining whether the statements at issue are protected is whether those statements relate to the religious beliefs and practices of the Mission. It is clear that a religious organization, merely because it is such, is not shielded by the First Amendment from all liability for fraud. *See Founding Church of Scientology v. United States, supra; see also Cantwell v. Connecticut,* 310 U.S. 296, 60 S.Ct. 900, 84 L.Ed. 1213 (1940). If the statements involved here do not concern the religious beliefs and practices of the Mission, the Free Exercise Clause provides no defense to plaintiff's action. Defendant presented evidence that

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the courses and auditing in which plaintiff participated, and about which the alleged misrepresentations were made, were part of the religious beliefs and practices of Scientology. Plaintiff did not, and does not, contest that fact.

The final inquiry involved in determining whether the alleged misrepresentations are protected by the First Amendment is whether the statements, although made on behalf of a religious organization and having a religious character, were nonetheless made for a wholly secular purpose. Although we find that it has been established in this record that Scientology is a religion, that the Mission is a religious organization and that the statements which are claimed to be religious relate to religious beliefs and practices of Scientology, plaintiff did present evidence that the courses and auditing she received were offered to her on an entirely secular basis for self-improvement, thereby creating a jury issue as to that matter. Plaintiff testified that she was told that the term "religion" and "church" were used only for public relations purposes. She also presented testimony from a former Mission staff member that the staff was instructed to avoid the issue of religion when attempting to interest someone in Scientology and that, if pressed, they were to say that it is not a religion.[27]

[14] There is, on the other hand, evidence that plaintiff joined the Church of Scientology and that she was told that the courses and practices were religious in nature. Many of the materials which she read contained a statement inside the front cover which indicated that Scientology is a religion, that auditing is a religious practice and that the E-meter is a religious artifact.[28]

In *United States v. Article or Device, Etc., supra,* 333 F.Supp. at 363–365, the district court, sitting without a jury, found that Scientology services were offered on both a religious and a secular basis and that the E-meter was misbranded because much of the literature explaining its use and expounding on its value was presented in an entirely non-religious context. The court recognized that complete condemnation of the E-meter would encroach upon the religious freedom of those who used the device as a religious artifact. It therefore ordered the device condemned with the provision that it could be distributed only for use in bona fide religious counseling. This case differs from *United States v. Article or Device, Etc., supra,* in that the court there pointed out that there were organizations other than the Founding Church of Scientology that were using the E-meter and offering auditing services. It was the use of the E-meter by the secular organizations which the court forbade. The court did not consider whether use *by the Church* could be on a secular as well as on a religious basis. We believe that such a possibility exists.

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[27] It is suggested in Weiss, *Privilege, Posture and Protection: "Religion" in the Law,* 73 Yale LJ 583, 604 (1964), that

> "Because religion can be in conflict with other disciplines, because it cuts across everyday life, we can only know that a claim is based on religion when we are told that it is. The legal basis for stating that a claim is in the religious domain can be that it is held out as being religious in nature.
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> * * * *
>
> "Since the Constitution prohibits defining an area of belief as 'religious,' a man must make it clear that the beliefs he represents are 'religious' if he wants to be free to express them under the constitutional warrant of freedom of religious belief. He has the burden of communicating that he speaks only from the authority of religion. But, once such a burden has been met, then we cannot attack the particular aspects of his faith as fraudulent.
>
> * * * *
>
> "What a man presents as a religious claim, then, cannot be attacked. It is only when he makes a representation beyond religious authority that we can apply laws of fraud."

As attractive as this analysis may be, we do not believe that it has been the approach taken by the courts in considering claims for protection under the First Amendment. As in *Welsh v. United States, supra,* and *Malnak v. Yogi, supra,* the proponents of a particular doctrine may unwittingly fail to define as "religious" what is, in fact, constitutionally protected as such.

[28] It is clear that in the context of the Establishment Clause the characterization of the activity as non-religious is not a determinative factor. *See Malnak v. Yogi, supra; see also Engel v. Vitale,* 370 U.S. 421, 82 S.Ct. 1262, 8 L.Ed.2d 601, 86 A.L.R.2d 1285 (1962); *Torcaso v. Watkins,* 367 U.S. 488, 81 S.Ct. 1680, 6 L.Ed.2d 982 (1961); *Welsh v. United States, supra.* On the other hand, the characterization of beliefs as religious by one seeking the protection of the Free Exercise Clause is not determinative either. *See Wisconsin v. Yoder, supra,* 406 U.S. at 215–16, 92 S.Ct. at 1533; *Founding Church of Scientology v. United States, supra; People v. Woody,* 40 Cal.Rptr. 69, 394 P.2d 813 (1964); *United States v. Kuch,* 288 F.Supp. 439 (D.D.C.1968).

There are certainly ideas which may only be classified as religious. Statements regarding the nature of a supreme being, the value of prayer and worship are such statements. There are also, however, statements which are religious only because those espousing them make them for a religious purpose. The statements which are alleged by plaintiff to be misrepresentations in this case are not of the type which must always and in every context be considered religious as a matter of law.

[15] We have found that it is established in this case that the Mission is a religious organization and that Scientology is a religion. Plaintiff does not dispute the claim that the courses and auditing she received are part of the religious beliefs and practices of Scientology. It is also uncontroverted that plaintiff applied to join the Church of Scientology, Mission of Davis, before taking any of the courses offered. These facts may be highly persuasive evidence of the contention that the courses and auditing plaintiff received were religious in nature and that the statements made regarding their nature and efficacy were religious statements. There is, however, conflicting evidence which the jury was entitled to consider. Plaintiff presented evidence from which it could be concluded that the courses and auditing were also offered on a wholly secular basis. Because the statements were not *necessarily* religious, plaintiff was entitled to have a jury consider, under proper instructions, the question of whether the statements were made for a wholly non-religious purpose. The trial court was correct, therefore, in refusing to rule before trial as to whether these alleged statements were religious. It was likewise correct in refusing to withdraw the statements from the jury's consideration.

We turn now to the question of the proper instructions to be given the jury in considering the allegations of fraud in this context.

FIRST AMENDMENT INSTRUCTION

[16] Defendants objected to the giving of the following instruction regarding the First Amendment defense:

> "The defendants have asserted as an affirmative defense that the Constitutions of the United States and the State of Oregon provide that religious beliefs and doctrines may not be questioned for truth or falsity. To establish this defense, defendants must prove that each of the acts or representations complained of were religious in nature and were held out as such to plaintiff.
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> "They must further prove that if the acts and representations complained of were held out as religious in nature, that they were held out by defendants as good faith religious beliefs and doctrine. Therefore, if you find that the acts or representations complained of were acts or representations religious in nature and held out as such, and held in good faith belief, then you may not inquire into the truth or falsity of such acts or representations. Your inquiry must end and your verdict shall be for the defendants. However, should you determine that any of the acts or representations complained of were not religious in nature or were not held out as such to the plaintiff, or were not held to be such in good faith, then you may determine the truth or falsity of such acts or representations."

We find the instruction to be an inaccurate statement of the law as it applies to this case and conclude that reversal of the judgment on the fraud cause of action is required.

Defendants first object to the submission to the jury of the question of the religious

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nature of the statements. That submission was not error. However, the directions for determination of that issue were erroneous. This record establishes that Scientology is a religion and that the Mission is a religious organization. It also establishes that the courses and auditing which plaintiff was induced to participate in are part of the religious beliefs and practices of Scientology. The Mission is, therefore, entitled to the protection of the First Amendment for statements regarding its religious beliefs and practices unless it is shown that the statements made were part of an offer of those services to the public on a wholly secular basis. The reasonable inference to be drawn from the instruction as given is that a determination should be made for each of the alleged misrepresentations as to whether it was religious and whether it was held out to plaintiff as religious in nature. This fragments the inquiry inappropriately. The question which the jury was required to decide in this case was whether, even though the Mission is a religious organization, it offered the services in question here on a wholly non-religious basis. *See Founding Church of Scientology v. United States, supra.* It is only upon an affirmative finding on that issue that liability can attach for the statements made in this case. The jury was not correctly instructed in that regard.

In addition, the instruction that the statements must be held out as religious in good faith is not accurate. The question of "good faith" belief is quite complicated in this case, for the defendants charged with fraud are not the individuals who made the representations, but the religious organizations themselves. It is true that in many cases in which free exercise protection has been sought, courts have looked to whether the one seeking the protection is "sincere" in his or her belief in the doctrine at issue. *See, e.g., People v. Woody, supra; Teterud v. Burns,* 522 F.2d 357 (8th Cir. 1975). Those cases, however, involve the sincerity of the *individual* claiming the protection.

United States v. Ballard, supra, has been cited to us for the proposition that the sincerity of the proponents of religious belief is a proper subject for inquiry in an action for fraud. We do not read *Ballard* so to hold. In *Ballard,* a criminal action for mail fraud, the parties agreed in the trial court that the issue of the truth or falsity of the statements at issue would not be submitted to the jury, but only the question of whether the defendants honestly and sincerely believed the statements they made. After a jury verdict finding them guilty, the defendants contended that it was improper to withdraw from the jury the question of whether the statements made were true or false. The Circuit Court of Appeals agreed and reversed the conviction. On appeal, the Supreme Court held that "* * * the District Court ruled properly when it withheld from the jury all questions concerning the truth or falsity of the religious beliefs or doctrines of [the defendants]." The Court then noted that the defendants urged other grounds for supporting the reversal of the convictions, but it refused to consider those contentions before giving the circuit court an opportunity to consider the issues first. 322 U.S. at 88, 64 S.Ct. at 887. *Ballard* did not address the question of the propriety of submitting the issue of the defendants' sincerity to the jury. In addition, the defendants in *Ballard* were the very individuals accused of actually making the statements at issue. The liability of a religious organization for the statements of its agents was not discussed.

In the situation presented here, it is difficult to determine *whose* sincerity or good faith the jury could be asked to determine. Is the religious organization to be held liable if one of its ministers is less than a true believer? Or is it to be saved from liability if the individual who makes the statement truly believes, but others in the church do not?

In *Founding Church of Scientology v. United States, supra,* the court suggested that liability might attach if it were shown

> "* * * that an item (book, pamphlet, advertising flier) makes out a self-sufficient non-religious claim for Scientology services, *to which a religious appeal has*

been merely tacked on." 409 F.2d at 1165. (Emphasis supplied.)

As we have indicated, defendants could be held liable if the jury found that the courses and services offered by the Mission to plaintiff were offered for a wholly secular purpose. A wholly secular purpose means that, at the time they were made to this plaintiff, the statements were made for a purpose other than inducing plaintiff to join or participate in defendants' religion. A wholly secular purpose, in this regard, would include, but not be limited to, the intention solely to obtain money from plaintiff. On this record it would have been proper to instruct the jury that it is possible to find that the services were offered on a wholly secular basis, notwithstanding the fact that plaintiff was required to join the Church of Scientology in order to participate and that the materials she was given to read stated that Scientology is a religion. A jury could find that the courses and services were offered on a secular basis and that a religious designation had been merely "tacked on." Phrasing the issue as one of good faith was therefore misleading and erroneous.

Defendants also contend that the instruction improperly placed on them the burden of proof on the question of the religious nature of the representations. They contend that it was improper to require that they prove the statements were religious when it was plaintiff's burden to prove knowledge of falsity to recover for fraud. Defendants confuse the burden of proving fraud with the burden of proving the affirmative defense of freedom of religion. As this instruction indicates, it is appropriate for the jury to consider the matter of the defense first, before reaching the issue of the truth or falsity of the statements for deciding the issue of fraud. That approach makes good sense in this context.

In summary, we conclude that the motions of all defendants for directed verdicts on the claims for outrageous conduct should have been granted. The motions of COSOP and Delphian for directed verdicts on plaintiff's action for fraud should have also been granted. The instruction which was given regarding the Free Exercise defense asserted by the remaining defendants was erroneous and requires reversal.

Because of the disposition we have made of the causes of action and counts, this case will have to be retried. We now turn to the assignments of error which raise issues which are likely to arise on re-trial.

EXHIBITS

[17, 18] Defendants assign error to the exclusion of three exhibits offered to show the good faith of the individual who informed plaintiff that L. Ron Hubbard had an honorary degree from Sequoia University and a degree from Princeton University. Those exhibits were photocopies of a telegram and two certificates. Plaintiff objected to the exhibits on the grounds of lack of authentication and hearsay. The objections were sustained. Those objections were not well taken. The exhibits were offered to show the state of mind of the individual who made the representations regarding Hubbard's background to plaintiff. That individual testified that he had seen the exhibits before talking with plaintiff and believed them to be true. Neither the truth of the matter contained in the exhibits nor their authenticity was asserted by defendants. The state of mind of the one accused of making fraudulent representations is clearly at issue where one of the elements to be shown is the speaker's knowledge of the falsity of the representation being made. *See Linebaugh v. Portland Mortgage Co.*, 116 Or. 1, 239 P. 196 (1925); *Seaside, City of v. Randles*, 92 Or. 650, 180 P. 319 (1919). The exhibits were relevant to that state of mind, and their exclusion was error.

INSTRUCTIONS

[19] Defendants assign error to the giving of certain instructions and the failure to give other instructions. The first assignment we consider is the failure of the trial court to give defendants' requested instruction defining "justifiable reliance" as follows:

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> "A party claiming to have been defrauded by a false representation must not only have acted in reliance thereon, but must have been justified in such reliance, that is, the situation must have been such as to make it reasonable for him, in the light of the circumstances and his intelligence, experience and knowledge, to accept the representation without making an independent inquiry or investigation."

The court instructed the jury that to find for plaintiff it must find that "* * * the plaintiff having a right to do so, reasonably relied upon the representation and did not know it was false." We believe the instruction given by the trial court "adequately and accurately state[d] the applicable law." *Bowids v. Taggesell Pontiac*, 245 Or. 86, 95, 419 P.2d 414 (1966); *see also Yardley v. Rucker Brothers Trucking, Inc.*, 42 Or.App. 239, 600 P.2d 485 (1979), *rev. den.* 288 Or. 335 (1980). It was not error for the trial court to refuse to give the instruction requested by defendants.

[20] Defendants also assign error to the failure to give their requested instruction defining "material fact." The court instructed the jury that there must have been "a false representation of material fact" in order to find for the plaintiff on her fraud claim. Defendants requested the following instruction defining "material fact":

> "A fact is material if a reasonably prudent person under the circumstances would attach importance to it in determining his course of action."

Plaintiff does not contend that this instruction is an incorrect statement of the law, but only that it was unnecessary to instruct the jury on the meaning of the term material because that term was used in its usual and conventional sense. We disagree that the instruction was unnecessary. The term "material fact," as it is used as an element of an action for fraud, involves the kind of objective standard included in the requested instruction. *See Milliken v. Green*, 283 Or. 283, 583 P.2d 548 (1978). The dictionary definition of "material," "being of real importance or great consequence," Webster's Third International Dictionary, does not contain that objective element. Defendants were entitled to have the jury instructed on the definition of the term which constitutes an element of the action against which they were defending.

[21] Defendants also contend that the trial court erred in failing to instruct the jury that "fraud is never presumed." Within the context of the instructions as a whole, see *Yardley v. Rucker Brothers Trucking, Inc.*, *supra*, we believe the jury was adequately instructed in that regard, and the failure to give the instruction was not error.

[22] Defendants assign error to the failure to give their requested instructions containing the specific language of the First and Fourteenth Amendments to the United States Constitution and Article I, Sections 2 and 3 of the Oregon Constitution.[23] The refusal to give such instructions was not error. The language of the constitutional provisions is not by itself a statement of the law which was necessary or even particularly helpful to the jury in resolving the issues

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[23] Defendants' requested instructions were as follows:

"The First Amendment to the United States Constitution provides that: 'Congress shall make no law respecting the establishment of religion or prohibiting the free exercise thereof.'

"The Fourteenth Amendment to the United States Constitution provides that: '* * * No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny any person within its jurisdiction equal protection of the laws.'

"Article I, Section 2 of the Oregon Constitution provides under Freedom of Worship: 'All men shall be secure in the natural right, to worship Almighty God according to the dictates of their own consciences.'

"Article I, Section 3 of the Oregon Constitution under Freedom of Religious Opinion provides: 'No law shall in any case whatever, control the free exercise, and enjoyment of religious opinions, or interfere with the rights of conscience.'"

in this case. Although it might not have been error to give such an instruction, neither was it error to refuse to do so.

[23] Finally, defendants assign error to the refusal to give the following instruction:

> "The parties have stipulated that Scientology is a religion. I instruct you that for all purposes in this case Scientology is a religion and the Church of Scientology, Mission of Davis, and Church of Scientology of Portland are religious institutions."

The first portion of their requested instruction is not correct. Plaintiff did not stipulate that Scientology is a religion. She chose to approach the problems presented in this litigation on the basis that it did not matter whether Scientology is a religion, because the defendants could be liable in any event. That does not amount to a stipulation that Scientology is a religion. However, we have determined that the record in this case establishes, as a matter of law, that Scientology is a religion. The jury should have been so informed.

PUNITIVE DAMAGES

The final assignment of error we consider[30] is the failure of the trial court, on motion by defendants, to withdraw from the jury the claim for punitive damages. In the trial court and in this court defendants rely on *Wheeler v. Green*, 286 Or. 99, 593 P.2d 777 (1979), for the proposition that imposition of punitive damages is constitutionally impermissible in the context of free speech.[31] Defendants contend that that proposition also applies to the area of free exercise of religion and that statements arguably religious should not subject one to liability for punitive damages because of the "chilling effect" such awards could have on the practice of religion. They make only constitutional arguments and do not argue that the case is otherwise inappropriate for an award of punitive damages.

After the briefs in this case were submitted, the Oregon Supreme Court decided *Hall v. May Department Stores Co., supra*, in which it held that punitive damages are not available in an action for outrageous conduct in which the only conduct which subjects the defendant to liability is "speech." The court stated:

> "When the cause of defendant's liability is his 'abuse' of speech and expression, as in the case of defamation, *Wheeler v. Green* holds that the 'responsibility for the abuse' is confined to civil liability for compensation only. Here the injury was to plaintiff's person rather than her reputation, but as long as it resulted from an 'abuse' of speech only, the principle is the same." 292 Or. at 146, 637 P.2d 126.

It might well be argued on the basis of the above language that any fraud which involves an abuse of speech or expression is similarly exempt from the imposition of punitive damages. The Supreme Court has, however, recognized the possibility of an award of punitive damages in cases involving fraud in several recent opinions. *See, e.g., Schmidt v. Pine Tree Land Dev.*, 291 Or. 462, 631 P.2d 1373 (1981); *Millikan v.*

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30. Defendants' other assignments of error are either mooted by our disposition of the issues we have discussed, were not preserved in the trial court, or are, in our estimation, unlikely to arise again on re-trial.

31. *Wheeler v. Green, supra*, is based on the Oregon Constitution. Defendants also rely on *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 94 S.Ct. 2997, 41 L.Ed.2d 789 (1974), for the proposition that punitive damages are constitutionally impermissible for defamation. *Gertz*, however, does not hold that punitive damages may never be awarded for defamation. The Court was concerned with the self-censorship of media defendants which might result from the possibility of punitive damage awards under state laws requiring less than a showing of actual malice. The Court stated:

> "We also find no justification for allowing awards of punitive damages against publishers and broadcasters held liable under state-defined standards of liability for defamation. * * * In short, the private defamation plaintiff who establishes liability under a less demanding standard than that stated by *New York Times* [*Co. v. Sullivan*, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686, 95 A.L.R.2d 1412 (1964), that is 'actual malice'] may recover only such damages as are sufficient to compensate him for actual injury." 418 U.S. at 350, 94 S.Ct. at 3012.

Green, supra; Green v. Uncle Don's Mobile City, 279 Or. 425, 568 P.2d 1375 (1977). Although we are not certain just what the analytical distinction is, given the broad language in *Hall*, we do not believe that the Supreme Court intended to prohibit the award of punitive damages in all cases of fraud, and we decline to do so here.

Defendants, arguing without "benefit" of *Hall*, do not claim that all fraud is exempt from the imposition of punitive damages, but that "* * * in the sensitive area of First Amendment freedoms, a plaintiff can recover only compensatory damages." They contend that the imposition of punitive damages would have a chilling effect, not only on the exercise of free speech and association, but on the free exercise of religion as well.

[24, 25] As we have stated, we do not agree that punitive damages are unavailable for fraud merely because the fraudulent representations are "speech." Defendants suggest that because the actions giving rise to this cause of action occurred in the context of a religious organization of which plaintiff was a member, the free exercise of religion would be chilled by the possibility of a punitive damage award. We do not believe that such a chilling effect is a threat to the free exercise of religion. In order to be actionable at all, the statements alleged must be found to have been *non-religious* as made. Defendants' argument seems to lead to the conclusion that religious organizations should not be made liable for punitive damages because they are religious organizations, even if the content of the statements which they are alleged to have made is not religious. We find no constitutional requirement for such an exemption. The free exercise of religion is sufficiently protected by the broad scope of what *is* protected as religious belief and practice and the fact that the truth or falsity of such religious beliefs may not be determined in an action for fraud. The trial court properly denied defendants' motion to strike the claim for punitive damages.

Reversed as to defendants Church of Scientology of Portland and Delphian Foundation: reversed and remanded for a trial as to defendants Samuels and C of Scientology, Mission of Davis.

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57 Or.App. 281

STATE of Oregon, Appellant,

v.

Frank J. THOMPSON, Respondent

No. 25352; CA A20277.

Court of Appeals of Oregon,
In Banc.

Argued and Submitted Aug. 10, 1981.

Taken In Banc April 7, 1982.

Decided May 12, 1982.

State appealed from an order of t Circuit Court, Columbia County, Delbert Mayer, J., dismissing charge of crimin trespass in the second degree on doub jeopardy grounds after defendant was co victed of contempt and fined for the sa conduct which had resulted in the crimina charge. The Court of Appeals, Thornto J., held that defendant's punishment for a indirect contempt resulting from his disobe dience of a restraining order did not ba prosecution for criminal trespass in th second degree involving the same facts

Reversed and remanded.

Van Hoomissen, J., dissented and file an opinion in which Joseph, C. J., Richardson and Buttler, JJ., joined.

1. Contempt ⚿4

In a "civil contempt" the contemnor violates a decree or order of the court made for the benefit of an adverse party litigant.

See publication Words and Phrases for other judicial constructions and definitions.

APR 16 1992

SUPREME COURT, APPELLATE DIVISION

FIRST DEPARTMENT, February 1992

Joseph P. Sullivan, J.P.
John Carro
Ernst H. Rosenberger
Richard W. Wallach
Israel Rubin, JJ.

Ivana Trump,

Plaintiff-Respondent,

-against-

Donald J. Trump,

Defendant-Appellant.

45386
and
M-177

Defendant-appellant appeals from a supplemental judgment, Supreme Court, New York County (Phyllis Gangel-Jacob, J.), entered May 29, 1991, which, pursuant to a stipulation of settlement, resolved the plaintiff's action challenging the enforceability of the parties' post-nuptial agreement.

Jay Goldberg, of counsel (Judd Burstein, with him on the brief, Tenzer, Greenblatt, Fallon and Kaplan, attorneys) for defendant-appellant,

Robert Stephan Cohen, of counsel (Jonathan W. Lubell and Arlene R. Smoler, with him on the brief, Morrison Cohen Singer & Weinstein, attorneys) for plaintiff-respondent.

SULLIVAN, J.

The husband appeals from a supplemental judgment which, pursuant to a stipulation of settlement, resolved the wife's action challenging the enforceability of the parties' post-nuptial agreement. In their stipulation, the parties, subject to a number of specific modifications not here relevant, explicitly ratified the post-nuptial agreement, including a certain confidentiality provision. A proposed supplemental judgment incorporating by reference the post-nuptial agreement, as modified by the stipulation of settlement, was thereafter submitted to the court, which, sua sponte, without notice to the parties or explanation, excluded the confidentiality provision from incorporation into the supplemental judgment. Since the court's unilateral action in deleting the confidentiality provision was both unjustified and unauthorized, we modify to vacate the deletion.

Married on April 9, 1977, the parties, with the advice of separate counsel, on December 24, 1987, entered into a post-nuptial agreement (the Agreement), which superceded three prior agreements dated March 22, 1977, July 24, 1979 and May 25, 1984, respectively. Paragraph 9(b) of the Agreement set out, in the event of divorce or separation, the parties' rights and obligations, including, inter alia, the husband's obligation to pay $350,000 per annum to the wife as maintenance and $10,000,000 in a lump sum within 90 days after entry of a decree of divorce. Paragraph 10 of the Agreement provides:

> Without obtaining [the husband's] written consent in advance, [the wife] shall not directly or indirectly publish, or cause to be published, any diary, memoir, letter, story, photograph, interview, article, essay, account, or description or depiction of any kind whatsoever, whether fictionalized or not, concerning her marriage to [the husband] or any other aspect of [the husband's] personal, business or financial affairs, or assist or provide information to others in connection with the publication or dissemination of any such material or excerpts thereof. *** Any violation of the terms of this Paragraph (10) shall constitute a material breach of this agreement. In the event such breach occurs, [the husband's] obligations pursuant to Paragraph (9) hereof, to make payments or provisions to or for the benefit of [the wife], shall thereupon terminate. In addition, in the event of any such breach, [the wife] hereby consents to the granting of a temporary or permanent injunction against her (or against any agent acting in her behalf) by any court of competent jurisdiction prohibiting her (or her agent) from violating the terms of this Paragraph.

Paragraph 12 of the Agreement states:

> In the event that an action for divorce is instituted at any time hereafter by either party against the other in any court of competent jurisdiction, the parties hereto agree that they nevertheless shall be bound by all of the terms of this Agreement. To

> the extent possible and appropriate this Agreement shall be incorporated in the decree to be entered in such action and shall not be merged therein. If there be anything in such judgment or decree inconsistent with any of the terms or provisions of this Agreement, the terms and conditions of this Agreement shall govern and shall survive such decree.

In March, 1990, the wife commenced an action, alleging, inter alia, that, to the extent the Agreement provides that she has waived her claims to marital property under Domestic Relations Law §236, it is unconscionable and the product of overreaching and fraud and, thus, unenforceable and seeking a declaration to that effect. The wife subsequently instituted an action for divorce. Both cases were assigned to the same IAS court, which, without resolving the issue as to the enforceability of the Agreement, on December 12, 1990, granted the wife a judgment of divorce on the ground of cruel and inhuman treatment.

Thereafter, on March 22, 1991, the parties, after extensive negotiations, disposed of the declaratory judgment action by entering into a stipulation of settlement which, except for certain modifications not relevant herein, expressly ratified all the provisions of the Agreement. The stipulation further provided, "[The wife's] acceptance of the check for $10,000,000 tendered herewith on the evening of March 22, 1991 shall constitute the parties' irrevocable acceptance of the terms of this stipulation and any documents executed in connection herewith." The wife withdrew her claims challenging the enforceability of the Agreement and, on May 22, 1991, the IAS court signed a supplemental judgment incorporating by reference all the terms of the Agreement, as modified by the March 22, 1991 stipulation of settlement, except paragraph 10, which it, sua sponte and without explanation or notice to the parties, excluded.

It is well settled that, in the absence of any affront to public policy, parties to a civil dispute have the right to chart their own litigation course. (T.W. Oil, Inc. v. Consolidated Edison Co. of New York, Inc., 57 NY2d 574, 579-580.) "[C]ourts have long favored and encouraged the fashioning of stipulations as a means of expediting and simplifying the resolution of disputes." (Mitchell v. New York Hosp., 61 NY2d 208, 214.) In disposing of such litigation, parties "may stipulate away statutory, and even constitutional rights." (Matter of New York, Lackawanna & Western R.R. Co., 98 N.Y. 447, 453; see, Matter of Abramovich v. Board of Educ., 46 NY2d 450, 456, cert. den., 444 U.S. 845 [waiver of due process right to a hearing]; Matter of Sonenberg v. Fuller, 114 AD2d 677 [waiver of due process and equal protection rights].) Of course, given a showing of cause sufficient to invalidate a contract, such as fraud, collusion, mistake or some such similar ground, a court may relieve a party from the consequences of his or her stipulation. (1420 Concourse Corp. v. Cruz, 135 AD2d 371, 372.)

Quite apart from the latter considerations, the wife contends that in declining to incorporate the confidentiality clause of the Agreement into the supplemental judgment of divorce, the IAS court properly invoked the discretion specifically afforded it by the parties in paragraph 12 of the Agreement. She argues that since the court was bound to incorporate the terms of the Agreement "[t]o the extent possible and appropriate," it was vested with the discretion to refuse to incorporate those provisions it deemed inappropriate. To interpret the phrase "[t]o the extent possible and appropriate" as conferring upon the court the unfettered discretion to pick and choose the terms of the Agreement, as ratified by the stipulation of settlement, it deemed appropriate for incorporation would result in a complete undoing of the settlement and violate the principle that the parties are free to chart their own litigation course. The only reasonable interpretation of the clause is that it authorizes the court, for sound reasons and after notice to the parties, to refuse to incorporate some of the terms of the Agreement. Thus, contrary to the wife's arguments, paragraph 12 itself does not afford the court any more authority to interfere with the parties' own agreement than the court would have under existing law.

Moreover, and perhaps more important, is the manner in which the IAS court refused to incorporate paragraph 10. Even assuming that the court had a sound basis for refusing to enforce the confidentiality clause, as a matter of procedural due process, the parties were entitled to notice and an opportunity to be heard before the court, sua sponte, altered the terms of their agreement. The use of the word "appropriate" in paragraph 12 can only be reasonably interpreted as contemplating that the decision not to incorporate a provision of the Agreement would be discussed and that any attempt to limit the incorporation of any provision would be made to the court on appropriate notice and with an opportunity to be heard. In the absence of any indication that the parties had such notice, it is apparent that the court acted without authority in excluding paragraph 10 from incorporation into the supplemental judgment. Moreover, in the absence of some explanation of the court's refusal to incorporate paragraph 10, we are not in a position to review the merits of its actions.

The wife also advances a substantive argument justifying the court's refusal to incorporate paragraph 10 into the supplemental judgment. She claims that, absent a compelling state interest, the federal and New York State constitutions bar a court from issuing a prior restraint barring an individual from ever publishing any statements about a specific subject. Of course, we can only speculate that this was the rationale for the court's actions since, as noted, it gave no explanation as to its reasons. Furthermore, the constitutional prohibition against prior restraint applies only to orders issued by the government. In arguing that a divorce judgment incorporating the terms of a post-nuptial agreement is the equivalent of a governmental order, the wife takes a great leap in logic. We reject such a premise.

Nor is there any evidence or indeed any claim that the Agreement was the product of fraud, collusion, mistake, accident, or some such similar ground. While the supplemental judgment was entered in the context of a lawsuit in which the wife had originally claimed fraud and duress, those claims had been withdrawn and the court, by incorporating the Agreement into the judgment, placed its own stamp of approval on its terms, as well as on the wife's withdrawal of her fraud and duress claims.

In any event, even in the absence of the trial court's approval, there is no basis for a fraud or duress claim with respect to paragraph 10 of the Agreement. In commencing an action challenging the validity of the Agreement, the wife sought a declaration that it is unenforceable only to the extent that it provides that the wife has waived her claim to marital property or restricted the rights of the children of the marriage. At no time did she claim that paragraph 10 was the result of fraud or duress. When, on March 22, 1991, the parties entered into a settlement of that action, they agreed to modify certain portions of the Agreement and to ratify the unchanged portions. Thus, the wife twice agreed to abide by paragraph 10: in 1987 when she signed the Agreement and in 1991 when she entered into the stipulation of settlement; she was represented by counsel on both occasions.

Since it is clear that the trial court exceeded its "limited authority to disturb the terms of a separation agreement" (Kleila v. Kleila, 50 NY2d 277, 283) and paragraph 10 does not, on its face, offend public policy as a prior restraint on protected speech (see, Snepp v. United States, 444 U.S. 507), we modify to incorporate the terms of said agreement into the supplemental judgment as agreed to by the parties.

Accordingly, the supplemental judgment of divorce of the Supreme Court, New York County (Phyllis Gangel-Jacob, J.), entered May 29, 1991, should be modified, on the law, to delete therefrom the exception of paragraph 10 of the December 24, 1987 post-nuptial agreement from incorporation therein and, except as thus modified, affirmed, without costs or disbursements.

M-177 Trump v Trump

Motion by plaintiff-respondent to strike statements of alleged fact in appellant's brief is denied.

All concur.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT

ENTERED: April 16, 1992

Catherine O'Hagan Wolfe
Clerk. ~~DEPUTY CLERK~~

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Blvd., Suite 2000, Hollywood, California 90028.

On November 24, 1992, I served the foregoing document described as PLAINTIFF CHURCH OF SCIENTOLOGY INTERNATIONAL'S REPLY TO DEFENDANT'S OPPOSITION TO PLAINTIFF'S DEMURRER TO AMENDED ANSWER on interested parties in this action by

[ ] by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

[X] by placing [ ] the original [X] a true copy thereof in sealed envelopes addressed as follows:

Ford Greene **BY TELEFAX & U.S. MAIL**
HUB Law Offices
711 Sir Francis Drake Boulevard
San Anselmo, CA 9490-1949

[X] BY MAIL
[ ] *I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.
[X] As follows: I am "readily familiar" with the firm's practice of collection and processing correspondece for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on November 24, 1992, at Los Angeles, California.

[ ] **(BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

Executed on ____________, 1992, at Los Angeles, California.

[X] (State) I declare under penalty of the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

PAul Bead Ford
Type or Print Name

Paul Bradford
Signature

* (By Mail, signature must be of person depositing envelope in mail slot, box or bag)

** (For personal service signature must be that of messenger)

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Blvd., Suite 2000, Hollywood, California 90028.

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[ ] by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

[X] by placing [ ] the original [X] a true copy thereof in sealed envelopes addressed as follows:

Paul Morantz **BY HAND**
P.O. Box 511
Pacific Palisades, CA 90272

[ ] BY MAIL
  [ ] *I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.
  [ ] As follows: I am "readily familiar" with the firm's practice of collection and processing correspondece for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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[ ] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Aaron Cinelson

Type or Print Name

Signature

* (By Mail, signature must be of person depositing envelope in mail slot, box or bag)

** (For personal service signature must be that of messenger)

TT

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

423

TE: 12/28/92

DEPT. 30

HONORABLE David Horowitz **JUDGE**

S. ROBLES **DEPUTY CLERK**

HONORABLE **JUDGE PRO TEM**

ELECTRONIC RECORDING MONITOR

2

C. AGUIRRE, CSL **Deputy Sheriff**

B. CHARLINE HOWELL **Reporter**

8:30 am BC052395
Church of Scientology, etc.
VS
Gerald Armstrong, et al.

170.6 JUDGE GEERNAERT

Plaintiff Counsel LAURIE J. BARTILSON (x)

Defendant Counsel FORD GREENE (x)

157680

FILED
NOV 16 1994
HOWARD HANS
MARIN COUNT

NATURE OF PROCEEDINGS:

DEMURRER BY CHURCH OF SCIENTOLOGY INTERNATIONAL TO AMENDED ANSWER OF GERALD ARMSTRONG;

MOTION OF PLAINTIFF AND CROSS-DEFENDANT, CHURCH OF SCIENTOLOGY INTERNATIONAL, TO STRIKE CROSS-COMPLAINT' OR IN THE ALTERNATIVE TO STRIKE PORTIONS THEREOF AND FOR SANCTIONS AGAINST CROSS-COMPLANANT GERALD ARMSTRONG AND HIS COUNSEL OF RECOND, PAUL MORANTZ AND FORD GREENE; C/F 12/15

FURTHER STATUS CONFERENCE;

Motion to Strike Cross-Complaint DENIED.

Cross-Complaint has significantly reduced the amount of conclusionary and unnecessarily inflammatory statements from his pleadings. In an effort to move these proceedings along, the Court will deny the motion to strike and request for sanctions. Cross-Defendant to answer within 20 days.

Demurrer to Answer OVERRULED.

Many of the arguments made by the moving party are correct. These are serious deficiencies in many of the affirmative defenses alleged by the Defendant. However, if the Court were to sustain the demurrer it would have to do so with leave to amend. The Defendant may or may not be able to cure the deficiencies. The end result of sustaining the demurrer would simply be to delay the case and

MINUTES ENTERED
12/28/92
COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

I .: 12/28/92

DEPT. 30

HONORABLE David Horowitz JUDGE

S. ROBLES DEPUTY CLERK

HONORABLE JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

2u

C. AGUIRRE, CSL Deputy Sheriff

B. CHARLINE HOWELL Reporter

8:30 am

BC052395
Church of Scientology, etc.
VS
Gerald Armstrong, et al.

170.6 JUDGE GEERNAERT

Plaintiff Counsel LAURIE J. BARTILSON (x)

Defendant Counsel FORD GREENE (x)

NATURE OF PROCEEDINGS:

generate more costs for the parties.

Each of the affirmative defenses alleged is subject to a summary adjudication motion under Code of Civil Procedure Section 437c(f). The facts and law concerning each of the defenses can be addressed at the appropriate time and after discovery is completed.

The Demurrer is OVERRULED.

Conference is held.

A FINAL STATUS CONFERENCE is set for April 23, 1993 at 8:30 a.m., in this department.

TRIAL is set for May 3, 1993 at 8:30 a.m., in this department.

Exhibits D to Plaintiff's Reply Memorandum in Support of Motion to Strike Cross-Complaint and for Sanctions, a book entitled "What is Scientology", is returned to the moving party this date pursuant to order of the court.

Plaintiff shall give notice.

MINUTES ENTERED
12/28/92
COUNTY CLERK

FILE STAMP

FILED

DEC 28 1992

JAMES H. DEMPSEY, CLERK

BY S. ROBLES, DEPUTY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Church of Scientology

Plaintiff(s),

vs.

Gerald Armstrong

Defendant(s).

CASE NUMBER

BC 052395

STATUS CONFERENCE ORDER

2/92

NATURE OF CASE

NATURE OF THE CASE: *(Check the appropriate box.)*

☐ VEHICLE ACCIDENT
☐ SLIP AND FALL
☐ PREMISES LIABILITY
☐ WRONGFUL DEATH
☐ MEDICAL MALPRACTICE
☐ LEGAL MALPRACTICE
☐ ASSAULT AND BATTERY
☐ PRODUCT'S LIABILITY
☐ BAD FAITH
☐ WRONGFUL TERMINATION
☐ BUSINESS LITIGATION
☒ BREACH OF CONTRACT
☐ BREACH OF LEASE
☐ COLLECTION
☐ DECLARATORY RELIEF
☐ OTHER ______________
____
COMPLAINT FILED: ______________

Based upon the representations of the parties at the status conference held this date, the court now makes the following orders with respect to the timely completion of the pre-trial matters set out below (only the paragraphs with the box checked are applicable):

☐ 1. ARBITRATION:

The court finds that this case has not yet been submitted to judicial arbitration and that the amount in controversy will not exceed $50,000. The court therefore orders that this case be submitted to judicial arbitration (CCP §1441.11). The arbitration shall be concluded by ______________. Further status conference set for ______________ in this department. There will be no extension or change of these dates without prior court order. In the event arbitration award to plaintiff is less than $25,000, the parties are directed to submit to the Court in writing their respective positions concerning whether this case should be transferred to the Municipal Court. The parties' paper should be filed no later than seven days before the status conference scheduled above.

☐ The order for arbitration made ______________ is vacated.

☐ 2. TRANSFER:

After reviewing the case with counsel [and in light of the amount of arbitrator's award] [by stipulation] the court concludes that good cause exists for the transfer of this case to the Municipal Court of the ______________ Judicial District. Such transfer is hereby ordered. Plaintiff to pay the costs and fees of transfer.

☐ 3. REFERENCE:

Parties stipulate that ☐ case may be tried ☐ MSC be held by a reference judge, the parties sharing the costs as follows: ______________

☐ Case will be submitted to binding arbitration.

☐ 4. LAW AND MOTION:
the law and motion matters listed below remain to be resolved. Each motion shall be noticed for a hearing to be held not later than ____________________.

a. ____________________

b. ____________________

☐ 5. DISCOVERY:
All discovery is to be completed by ____________________
____
____________________.

☐ 6. EXPERT WITNESSES:

☐ a. No experts will be called.

☐ b. Demand for exchange per CCP §2034 is deemed made this date.

Exchange shall be by ____________________ and all expert deposition shall be completed by _____ days before Final Status Conference.

☐ 7. FICTITIOUS PARTIES/DEFAULTING PARTIES:

☐ Plaintiff represents that this action is at issue as to all defendants against whom plaintiff intends to proceed. As of the date of this order, all Doe defendants and all named defendants who have not been defaulted or who have not yet appeared are dismissed.

☐ Cross-complainant represents that this action is at issue as to all defendants against whom cross-complainant intends to proceed. As of the date of this order, all Doe cross-defendants and all named cross-defendants who have not been defaulted or who have not yet appeared are dismissed.

☐ 8. SETTLEMENT:
The court orders counsel confer re settlement and to report the status of such efforts by ____________________.

☒ 9. ~~FURTHER~~/FINAL STATUS/CONFERENCE:
A Final/~~Further~~ Status conference is set for Date: ~~4/30~~ 4/23 Time: 8 30 this department.
ALL TRIAL ATTORNEYS MUST APPEAR AT FINAL STATUS CONFERENCE.

☐ 10. The parties stipulate to waive the provisions of Sections 1307.4, 1307.5 and 1307.5.1 of the "Trial Court Delay Reduction Rules" and agree that trial preparation and the final status conference shall proceed at the discretion of the court after conferring with counsel.

☐ 11. MANDATORY SETTLEMENT CONFERENCE:
A Mandatory Settlement Conference (MSC) is set for ____________________, at __________ in Department _____. **ALL ATTORNEYS AND PARTIES MUST APPEAR.**

☒ 12. JURY/~~NON-JURY:~~
☐ Jury is waived. ☐ Jury is demanded by D who shall be responsible for posting jury fees by ____________________.

☒ 13. TRIAL DATE:
This case is set for trial on ~~3/22~~ ~~5/10~~ 5/3 at 8 30 a.m.
Trial estimate 2 days.

☐ 14. FINDINGS:

The Court finds the following:

☐ a. FAILURE TO GIVE NOTICE: ____________________ failed to give notice of this Status Conference, as required by an order or the rules of the Court.

☐ b. FAILURE TO APPEAR: ____________________ failed to appear at this Status Conference, after either having received proper notice or having previously waived formal notice.

☐ c. FAILURE TO FILE REQUIRED DOCUMENTS: ____________________ failed to timely file and serve the following fully complete document(s), as required by an order or the rules of the Court.

☐ 15. SANCTIONS:
Pursuant to CCP 177.5, 128, 128.5, 583.410, CRC 227, and LASC Rule 1310, the Court orders as follows:

☐ a. MONETARY SANCTIONS:

☐ TO THE COUNTY: ____________________ is ordered to pay $______________ to the Clerk of the Court within 10 days.

☐ TO THE OTHER PARTY(IES): ____________________ is ordered to pay $______________ to ____________________ within 30 days, as reasonable attorney's fees and costs.

☐ b. DISMISSAL/ENTRY OF DEFAULT:

☐ The Complaint/Cross-Complaint of ____________________ is ordered dismissed this date.

☐ The Answer of defendant/cross-defendant ____________________ is ordered stricken this date, and the default of said party is ordered entered this date.

☐ Plaintiff(s)/Cross-complainant must obtain a default judgment within _____ days from the date of this order.

☐ 16. FINAL DISPOSITION—CASE SETTLED:

☐ Dismissal(s)/Judgment must be entered on or before ____________________.

☐ Counsel for ____________________ shall file a statement pursuant to CRC 225 within _____ days.

☐ 17. OTHER ORDERS:

____

____

____

☒ 18. NOTICE:
☐ waived ☒ to be given by π.

Dated: DEC 28 1992

David A. Horowitz
DAVID A. HOROWITZ
JUDGE OF THE SUPERIOR COURT

Andrew H. Wilson
WILSON, RYAN & CAMPILONGO
235 Montgomery Street
Suite 450
San Francisco, California 94104
(415) 391-3900

Laurie J. Bartilson
BOWLES & MOXON
6255 Sunset Boulevard, Suite 2[illegible]0
Hollywood, CA 90028
(213) 661-4030

Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY
INTERNATIONAL

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LOS ANGELES SUPERIOR COURT
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JAMES H. DEMPSEY, CLERK
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

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CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation,	CASE NO. BC 052395
Plaintiff,	EX PARTE APPLICATION FOR ORDER TO SHOW CAUSE WHY GERALD ARMSTRONG SHOULD NOT BE HELD IN CONTEMPT; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATIONS OF LAURIE BARTILSON AND KENDRICK L. MOXON AND SUPPORTING EXHIBITS
vs.	
GERALD ARMSTRONG; DOES 1 through 25, inclusive,	DATE: December 31, 1992 TIME: 1:30 p.m. DEPT: 88 DISCOVERY CUT-OFF: None MOTION CUT-OFF: None TRIAL DATE: May 3, 1992
Defendants.	

TO DEFENDANT AND GERALD ARMSTRONG AND HIS COUNSEL OF RECORD:

Notice is hereby given that on December 31, 1992 at 1:30 p.m., or as soon thereafter as the matter may be heard, in Department 88 of the above-entitled court, located at 111 North Hill Street, Los Angeles, California 90012, plaintiff Church of Scientology International ("Church") will move for an order from this Court directing defendant Gerald Armstrong ("Armstrong") to appear and to show cause why he should not be held in contempt of this Court and criminally sanctioned for such contempt. This application is made on the ground that Armstrong has knowingly violated this Court's May 28, 1992 preliminary injunction order by voluntarily assisting at least six persons litigating or otherwise pursuing claims against the Church, affiliated Churches of Scientology and/or Church staff. All of the targeted Churches of Scientology and staff are included within the group of protected persons referenced in the May 28, 1992 Order. The six persons who Armstrong has admittedly assisted since May 28, 1992 include Richard and Vicki Aznaran. Armstrong's earlier assistance to the Aznarans was central to the Church's successful preliminary injunction motion in this case.

While the Church has attempted to obtain, informally, Armstrong's compliance with this Court's May 28, 1992 Order during the past six months, such efforts have been repeatedly rebuffed by Armstrong. As such, the Church comes to no alternative but to submit this application. Coupled with his post-May 28, 1992 pronouncements that he has no intention of complying with any such order of the Court, Armstrong is clearly flaunting the authority of this Court in a manner that should be criminally sanctioned by fine and/or imprisonment under Code of Civil Procedure § 1218. If this Court does enter a finding of such contempt pursuant to Code of Civil Procedure § 1209, et seq., the Church submits that Armstrong's actions also warrant referral to the District Attorney for misdemeanor prosecution under Penal Code § 166(4).

Defendant Armstrong has been notified of this Application pursuant to Law and Discovery Policy Manual Para. 261, _et seq_. [Declaration of Kendrick L. Moxon.]

This application is based upon the attached memorandum of points and authorities, the attached Declaration of Laurie Bartilson and other supporting exhibits, the pleadings and records on file in this case and such further evidence and argument as may be allowed at the hearing on this application.

Dated: December 31, 1992

Respectfully submitted,

Andrew H. Wilson
WILSON, RYAN & CAMPILONGO

BOWLES & MOXON

By: ______________________
Laurie J. Bartilson

ATTORNEYS FOR PLAINTIFF
CHURCH OF SCIENTOLOGY
INTERNATIONAL

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Plaintiff Church of Scientology International ("the Church") seeks an order from this Court that will halt defendant Armstrong's repeated, deliberate violations of the May 28, 1992 preliminary injunction order ("May 28 Order"). The May 28 Order bars Armstrong from voluntarily assisting persons who are, inter alia, litigating or intending to litigate against the Church, its affiliated Churches of Scientology and their staffs. From post-injunction discovery in this case, a bizarre letter written by Armstrong to plaintiff's counsel and copied to 35 others, and, mostly recently, the receipt by plaintiff's counsel of a videotaped interview of Armstrong with at least one active anti-Church litigant, it is clear that Armstrong -- true to his June 24, 1992 sworn assertion that he would never comply with the May 28 Order -- has embarked on a willful, knowing and defiant campaign to violate that Order by aiding persons preparing prospective lawsuits or actually litigating against the Church, including, again, Richard and Vicki Aznaran. Indeed, Armstrong has sworn under oath that he has no intention of complying with this Court's order; every attempt made by plaintiff to obtain compliance has been met with derision, defiance and concocted claims of "privilege." It is for these actions, enumerated in the supporting declaration of Laurie J. Bartilson, that Armstrong should be made to show cause why he should not be found to be in criminal contempt of the May 28 Order.

///

II.

FACTUAL STATEMENT

A. The May 28 Order and Armstrong's Sworn Intention to Disregard It

The May 28 Order clearly states its prohibitions against Armstrong's voluntary assistance of claimants adverse to the Church:

> Defendant Gerald Armstrong, his agents, and persons acting in concert or conspiracy with him (excluding attorneys at law who are not said defendant's agents or retained by him) are restrained and enjoined during the pendency of this suit pending further order of this court from doing directly or indirectly any of the following:
>
> Voluntarily assisting any person (not a governmental organ or entity) intending to make, intending to press, intending to arbitrate, or intending to litigate a claim against the persons referred to in sec. 1. of the "Mutual Release of All Claims and Settlement Agreement" of December 1986 regarding such claim or regarding pressing, arbitrating or litigating it.
>
> Voluntarily assisting any person (not a governmental organ or entity) arbitrating or litigating a claim against the persons referred to in sec. 1 of the "Mutual Release of All Claims and Settlement Agreement" of December, 1986.

[Exhibit A, May 28 Order, p. 2, ¶ 6.] These particular prohibitions against Armstrong voluntarily assisting litigants and other claimants were based on paragraph 7G of the December, 1986 "Mutual Release of All Claims and Settlement Agreement" ("Settlement Agreement") referenced in the Order,[1] which this

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[1] Paragraph 7G of the Settlement Agreement states:

G. Plaintiff [Armstrong] agrees that he will not voluntarily assist or cooperate with any person adverse to Scientology in any proceeding against any of the Scientology organizations, individuals, or entities listed in Paragraph 1 above. Plaintiff also agrees that he will not cooperate in any manner with any organization aligned against Scientology. [Exhibit B, Settlement Agreement.]

Court found the Church held a reasonable probability of enforcing after trial. [Id., p. 1, ¶ 3.[2]]

Less than a month after the May 28 Order was issued, Armstrong asserted under oath in deposition that he would not honor its terms:[3]

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[2] As to the persons protected by this prohibition against assistance of adversaries, paragraph 1 of the Settlement Agreement states, in relevant part: ". . .the officers, agents, representative employees, volunteers, directors, successors, assigns, and legal counsel of [Church of Scientology International] as well as the Church of Scientology California, its officers, agents, representatives, employees, volunteers, directors, successors, assigned and legal counsel; Religious Technology Center, its officers, agents, representatives, employees, volunteers, directors, successors, assigns and legal counsel; all Scientology and Scientology affiliated organizations and entities and their officers, agents, representatives, employees, volunteers, directors, successors, assigns and legal counsel; L. Ron Hubbard, his heirs, beneficiaries, Estate and its executor; Author's Family Trust, its beneficiaries and its trustee; and Mary Sue Hubbard ..."

[3] Armstrong's intentional disregard for the court's orders in this case was also demonstrated by his actions subsequent to the March 5, 1992 issuance the temporary restraining order by Judge Dufficy of the Marin County Superior Court ("Armstrong TRO"). As the court's record shows, the Armstrong TRO restrained him, inter alia, from disclosing his experiences to third parties, including the press, as well as from assisting actual and prospective anti-Church litigants. However, through the March 12, 1992 deposition testimony in the matter of Hunziker, et al. v. Applied Materials, et al., Santa Clara County Superior Court No. 692629, Armstrong revealed that he was actively assisting the plaintiffs in that case in violation of the Armstrong TRO with negative materials on Scientology [Exhibit C, March 12 deposition of Gerald Armstrong in Hunziker, pp. 254-256, 323-330] and, in his October 7, 1992 deposition in the instant case, admitted that he had: (a) had discussions with Time Magazine reporter Richard Behar regarding the latter's litigation against the Church in the matter of Church of Scientology International v. Time Warner, Inc., Richard Behar, et al., U.S. District Court, Southern District of New York, No. 92 Civ. 3024(PKL); and (b) participated in the issuance of a press release critical of the Church and the Armstrong TRO on March 19, 1992. [Exhibit D, October 7, 1992 Deposition of Gerald Armstrong, pp. 338-339, 386-387; Exhibit E, press release.] As this Court's record also shows, on March 27, 1992, Judge Dufficy extended the Armstrong TRO to May 11, 1992. Nevertheless, Armstrong continued to violate that restraining (continued...)

> I have absolutely no intention of honoring that settlement agreement. I cannot. I cannot logically. I cannot ethically. I cannot morally. I cannot psychically. I cannot philosophically. I cannot spiritually. I cannot in any way. And it is firmly my intention to not honor it.
>
> Q. No matter what a court says?
>
> A. No court can order it. They're going to have to kill me.

[Exhibit F, June 24, 1992 deposition of Gerald Armstrong, p. 124; Declaration of Laurie J. Bartilson, ¶ 4.[4]]

Armstrong's intention to ignore the May 28 Order was reiterated in a letter sent by Armstrong to plaintiff's counsel, dated December 22, 1992. [Exhibit G.] In that letter, which is copied to his own attorneys but not sent by them,[5] Armstrong threatens that, if he is not paid $500,000 and this lawsuit dismissed, he intends to travel voluntarily to South Africa to testify against a church of Scientology, give interviews to the media, and voluntarily assist anyone and everyone opposing Churches that he can locate. [Id., pp. 3, 4, 6, 7, 8.] Expressing

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[3](...continued) order, conducting post-extension hearing interviews with the press on March 27, 1992 (Don Knapp of CNN), in April, 1992 (William Horne of American Lawyer Magazine) and, possibly, with Behar. [Exhibit D, Armstrong Deposition, pp. 342-344, 348-355, 386-387.]

[4] Similarly, Armstrong has confirmed that he indicated to Los Angeles Times reporter Robert Welkos his, Armstrong's, intention not to comply with the May 28 Order. [Exhibit D, October 7, 1992 Armstrong Deposition, pp. 378-379; Declaration of Laurie J. Bartilson, ¶ 5.]

[5] In what can only be described as deliberate harassment, Armstrong also sent copies of the letter to 35 individuals and groups, including anti-Church litigants, such as Vicki and Richard Aznaran, Larry Wollersheim and Joseph Yanny, and lawyers who represent clients in actions brought against one of more churches, including Toby Plevin, John Elstead, and Dan Leipold.

the viewpoint that the May 28 Order places no restrictions whatsoever on his conduct, Armstrong states:

> I consider myself free to do anything anyone can, except testify absent a subpoena. Much of what I am permitted to do I am going to do. . . .
>
> I will continue to associate with and befriend all those people I consider you attack unjustly and senselessly. I will make my knowledge and support available to the Cult Awareness Network, a group of people of good will you vilify, in all the litigation you have fomented against them[6]. . . . I will even make my knowledge and support available to entities like Time and people like Rich Behar in their defenses from your attacks.[7]

[Exhibit G, p. 3.] In that same letter, Armstrong makes plain the personal contempt which he has for a Court which would rule against him:

> There is also, as mentioned above, the fact that in order to defend myself from your attacks and to fund the defense of the litigation you have fomented I must speak and must publish. I'm sure you understand that I remain completely confident that no court, other than the odd one your mercenaries are able to compromise with bucks, babes or bull, will order me not to defend myself.

[Id. p. 5].

B. Armstrong's Contemptuous Violation of The May 28 Order

Since the May 28 Order, Armstrong has defiantly aided at

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[6] The Cult Awareness Network is an anti-religious group that advocates the kidnapping and forcible "deprogramming" of individuals belonging to religions which they have identified as "cults." While the Church is not presently suing the Cult Awareness Network in any litigation, the president of the Cult Awareness Network, Cynthia Kisser, has initiated an action ainst the Church and its president, Heber Jentzsch. [Bartilson ¶ 17.]

ehar is the author of a Time cover story concerning the ch ran in May, 1991. The Church is presently engaged against Time and Behar for defamation. [Bartilson least six claimants and litigants that fall within the above quoted prohibitions. That provision of voluntary assistance has included the following:

1. Vicki and Richard Aznaran

As initially raised in the Church's February 4, 1992 preliminary injunction motion in this case, Armstrong continues to be employed as a paralegal at the law offices of his counsel Ford Greene. [Exhibit H, July 22, 1992 Deposition of Gerald Armstrong, pp. 186-189; Bartilson Dec., ¶ 6]; see also, February 4, 1992 Memorandum of Points and Authorities in Support of Plaintiff's Motion for Preliminary Injunction for Breach of Contract ("Injunction Memorandum"), pp. 2-3.

A central point raised in the Church's Injunction Memorandum was Armstrong's assistance via Ford Greene to anti-Church litigants Richard and Vicki Aznaran. Id. It came to Church counsel's attention in early July, 1992 that Mr. Greene, after a hiatus, was again representing the Aznarans in the matter of Vicki Aznaran and Richard Aznaran v. Church of Scientology International, et al., U.S. District Court, Central District of California No. CV-88-1786-JMI(Ex). Consequently, a letter was sent on July 7, 1992 seeking Armstrong's and Greene's undertaking that Armstrong would not violate the May 28 Order by Armstrong's assistance in the Aznarans' case. [Exhibit I, July 7, 1992 Bartilson letter; Bartilson Dec., ¶ 7.] In a July 11, 1992 response, Mr. Greene declined to make any such assurances.

[Exhibit J, July 11, 1992 Greene letter; Bartilson Dec., ¶ 8.[8]] However, as Greene's paralegal, Armstrong has, since Greene's July 11 letter, admitted to "broadly discussing" with the Aznarans matters concerning their case against the Church and has assisted in the relay of communications between the Aznarans and Greene. [Exhibit D, October 8 Armstrong Deposition, pp. 448-451.] [See also, Exhibit K, July 18, 1992 Bartilson letter documenting Armstrong's direct contact relating to the Aznaran case and requesting again that he cease and desist; Exhibit L, July 30, 1992 proofs of service executed by Armstrong in the Aznaran case; Bartilson Dec., ¶¶ 8-11.] While his counsel has raised work product and attorney-client communications objections to disclosing the content of Armstrong's communications with the Aznarans [see footnote 7 and Exhibit D, pp. 448-451; Exhibit J, Greene's July 11, 1992 letter], Armstrong's admissions of assistance are ample evidence of his knowing violation of the May 28 Order.

2. Tillie Good, Denise Cantin and Ed Roberts

Moreover, Armstrong has admitted providing assistance through Greene to three other potential litigants pursuing claims against Church entities that fall within the scope of the May 28

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[8] Mr. Greene's letter was an early indication of the manner in which he and Armstrong would attempt to avoid compliance with the May 28 Order, first disingenuously labelling it "somewhat cryptic and difficult to enforce" and then claiming that confirmation of whether or not Armstrong was violating that order as Greene's paralegal invaded Greene's clients' attorney work product and confidential communications privileges. Id. However, as shown by Armstrong's subsequent actions and admissions, there is no doubt that Armstrong has used his paralegal position in Mr. Greene's office to engage in repeated violations of the May 28 order.

Order: (a) Tillie Good; (b) Denise Cantin; and (c) Ed Roberts. [Exhibit D, October 8 Armstrong Deposition, pp. 451-458; Exhibit M, July 19, 1992 demand letter regarding Tillie Hanna Good; Exhibit N, July 2, 1992 demand letter regarding Denise Cantin; Exhibit O, September 4, 1992 demand letter regarding Ed Roberts; Bartilson Dec., ¶ 12.] While Mr. Greene again foreclosed inquiry into the specifics of Armstrong's assistance in these cases [Exhibit C at 451-458], Armstrong did admit that he had met with and interviewed Mr. Roberts concerning the latter's Church dispute and has spoken with him some seven times since then. [Id. at 455-457.]

Indeed, Armstrong's assistance to Mr. Roberts is apparently independent of any assistance which Armstrong provides to Mr. Greene. In his December 22 letter, Armstrong asserted that he "is the only person in the world willing to help Mr. Roberts against your organization." [Exhibit G, p. 7.] In that letter, Armstrong includes the payment of an unspecified amount to Mr. Roberts as a "condition" to the ending of Armstrong's campaign of harassment against the Church. [Id. p. 6-7.]

As with his assistance to the Aznarans, Armstrong's work with these three litigants violates the letter and intent of the May 28 Order.

3. Jerry Whitfield

In addition, the Church has just learned that Armstrong engaged in a lengthy videotaped interview on November 6, 1992 concerning his purported Church experiences with anti-Church litigant Jerry Whitfield and others. [Exhibit P, transcript of November 6, 1992 interview at convention of the Cult Awareness

Network; Exhibit Q, videotape thereof; Bartilson Dec., ¶ 21.] Whitfield, a self-proclaimed "specialist" in the "deprogramming" of Church of Scientology parishioners, is currently a defendant in a false imprisonment and false arrest suit brought by Church staff member Angel Casillas, Angel Casillas v. Jerry Whitfield, Hanna Whitfield and Does 1-25, Los Angeles Municipal Court Case No. 91K49349.

The November 6 interview -- in which Armstrong admits his actions are in violation of the May 28 order[9] -- demonstrates conclusively that Armstrong knowingly has chosen to disregard and flaunt the Preliminary Injunction issued by this Court. In supplying Whitfield with a video tape for Whitfield's use in forcible deprogrammings to force unwilling Scientologists to renounce their faith and for possible use in the Casillas case, Armstrong has once again directly and voluntarily supported an adverse litigant to the Church. Indeed, the making of the video tape by Armstrong at all is another deliberate violation of yet another provision of the Settlement Agreement itself, as well as a violation of the preliminary injunction. In Paragraph 6(D) of the Agreement, Armstrong agreed, inter alia,

> [N]ever to create or publish or attempt to publish, and/or assist another to create for publication by

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[9] While again proclaiming that he will never comply with the order, Armstrong acknowledges that the interview itself is in violation: "I cannot, except pursuant to a subpoena, assist someone intending to file a claim or pressing a claim against the organization. Now then we are appealing even that narrow ruling, because that's unenforceable because if you construe that my ... that this video could possibly indirectly help someone in the future, I can't do this. And not only that but if you consider that my existence indirectly or directly helps someone, then I'll oblige to take my own life. In other words I must stop breathing." Exhibit P, November 6 interview transcript, p. 31.

> means of magazine, article, book or other similar form, any writing or to broadcast of to assist another to create, write, film or video tape or audio tape any show, program or movie, or to grant interviews or discuss with others, concerning their experiences with the Church of Scientology, or concerning their personal or indirectly acquired knowledge or information concerning the Church of Scientology, L. Ron Hubbard or any of the organizations, individuals and entities listed in Paragraph 1 above. [Armstrong] further agrees that he will maintain strict confidentiality and silence with respect to his experiences with the Church of Scientology and any knowledge or information he may have concerning the Church of Scientology, L. Ron Hubbard, or any of the organizations, individuals and entities listed in Paragraph 1 above. . . .

Armstrong's production, with Whitfield, of a videotaped interview which purports to discuss both his and Whitfield's experiences with the Church, and which was created to be shown by Whitfield to victims he hopes to "deprogram" from the Scientology faith, despite the Agreement, despite the May 28 Order, and despite repeated notice from counsel for plaintiff that plaintiff intended to enforce both the Agreement and the May 28 Order demonstrate most eloquently the contempt which Armstrong has for the legal process, plaintiff's rights, and this Court. His defiance is not accidental or a minor misstep: it is deliberate, flagrant, defiant contempt. If ever a case cried out for the issuance of an order to show cause, this is that case.

III.

DISCUSSION

The Church seeks an order to show cause why Armstrong should not be held in criminal contempt of the May 28 Order.[10] As embodied in Code of Civil Procedure § 1209 et seq., the Court has the power to punish acts, such as Armstrong's, which impede and obstruct the discharge of its duties. See, Morelli v. Superior Court (1969) 1 Cal.3d 328, 333, 82 Cal.Rptr. 375 (criminal contempt proceedings arising out of a civil action are aimed at the vindication of the authority of the court).

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[10] The Church does not seek a civil contempt of the May 28 Order as coercive confinement would, at best, result in Armstrong's "promise" not to violate that order, clearly a meaningless act in light of Armstrong's demonstrable lack of (continued...)

Violations of court orders constitute contempt. This Court has inherent power to enforce execution of its equity decrees. Brown v. Brown (1971) 22 Cal.App.3d 82, 84, 99 Cal.Rptr. 311 (same). Moreover, Code of Civil Procedure § 1209(a) specifically provides, in relevant part:

> [T]he following acts or omissions in respect to a court of justice, or proceedings therein, are contempts of the authority of the court:
>
> . . .
>
> 5. Disobedience of any lawful . . . order . . . of the court.

See also, Reliable Enterprises, Inc. v. Superior Court (1984) 158 Cal.App.3d 604, 204 Cal.Rptr. 786 (criminal contempt adjudication for violation of preliminary injunction upheld); Pacific Telephone and Telegraph Co. v. Superior Court (1968) 265 Cal.App.2d 370, 72 Cal.Rptr. 177 (Section 1209 contempt proceedings are special proceedings, criminal in character and intended to implement the inherent power of the court to enforce its lawful orders); Vanderstok v. Bank of America (1972) 29 Cal.App.3d 731, 734, 105 Cal.Rptr. 699 (contempt proceeding is a proper process for enforcement of an injunction order).

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[10] (...continued) credibility on undertakings to honor his agreements.

In order to establish such an indirect contempt committed out of the immediate presence of the court, the moving party must demonstrate by sworn statement facts constituting the violation of the court's order. Code of Civil Procedure § 1211. The moving party's affidavit or declaration "need only make a prima* facie showing of the elements of contempt. Those elements are that the court made a lawful order; the person cited for contempt had knowledge or notice of the order; and the person was able to comply, yet willfully disobeyed the order." Crawford v. W.C.A.B.. (1989) 213 Cal.App.3d 156, 169, 259 Cal.Rptr. 414, 422-423.

The Church, through the accompanying declaration of Laurie J. Bartilson, has met each of these requirements. Present at the depositions in which Armstrong made the admissions specified in Section II, supra, the recipient of the phone call and proofs of service Armstrong effected in aid of the Aznaran's case, and the recipient of Armstrong's December 22 letter, Ms. Bartilson establishes through her declaration: (a) Issuance of the valid May 28 Order; (b) Notice to Armstrong of the May 28 Order (through notice to his attorneys, in the manner authorized by the Court, on June 5, 1992) [Bartilson Dec., ¶ 3 and Exhibit S]; (c) Armstrong's knowledge of the May 28 Order (through his statements that he was aware of but would never comply with such order) [Bartilson Dec., ¶¶ 4, 5, 9, 10 and 13]; (d) Armstrong's ability to have complied with such order (through his actions of assistance to anti-Church litigants, Armstrong is just as able to desist from such actions) [Bartilson Dec., ¶¶ 4, 5, 9, 11, 12 and 13]; and (e) Armstrong's willful disobedience of the subject order (through his refusal to cease and desist from the prohibited assistance after direct notice and demand by Church counsel) [Bartilson Dec., ¶¶ 4, 5, 9, 11, 12, 13 and 14.]

Accordingly, Armstrong should be ordered to Show Cause why he should not be held in criminal contempt of this Court, with punishment in the form of fine not to exceed $1,000.00 and jail time not to exceed five days as this Court sees fit. Code of Civil Procedure § 1218. The Court should exercise all of its available powers to impress upon Armstrong that its orders mean what they say and will be enforced, despite the intransigence of an enjoined party. Indeed, incarceration is an unusually viable vehicle for impressing upon Armstrong the import of his obligations, inasmuch as Armstrong has publicly disavowed money as a meaningful or valuable commodity. [Exhibit R.] Moreover, with Armstrong expressing his "to the grave" defiance of the May 28 Order, the Church submits that upon a finding of contempt under Code of Civil Procedure § 1209, et seq., referral to the District Attorney for misdemeanor prosecution under Penal Code § 166(4) is also appropriate to address such a defiant, willful challenge to the Court's authority.

IV.

CONCLUSION

For the foregoing reasons, plaintiff Church respectfully requests that the Court order that Armstrong show cause why he should not be held in contempt of court and why plaintiff Church

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should not be awarded its costs, including attorneys' fees, in bringing this motion.

Dated: December 31, 1992

Respectfully submitted,

Andrew H. Wilson
WILSON, RYAN & CAMPILONGO

BOWLES & MOXON

By: Laurie J. Bartilson
Laurie J. Bartilson

ATTORNEYS FOR PLAINTIFF
CHURCH OF SCIENTOLOGY
INTERNATIONAL

Andrew H. Wilson
WILSON, RYAN & CAMPILONGO
235 Montgomery Street
Suite 450
San Francisco, California 94104
(415) 391-3900

Laurie J. Bartilson
BOWLES & MOXON
6255 Sunset Boulevard, Suite 2000
Hollywood, CA 90028
(213) 661-4030

Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY
INTERNATIONAL

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation, Plaintiff, vs. GERALD ARMSTRONG; DOES 1 through 25, inclusive, Defendants.	CASE NO. BC 052395 DECLARATION OF LAURIE J. BARTILSON IN SUPPORT OF APPLICATION FOR ORDER TO SHOW CAUSE WHY GERALD ARMSTRONG SHOULD NOT BE HELD IN CONTEMPT DATE: December 31, 1992 TIME: 1:30 p.m. DEPT: 88 DISCOVERY CUT-OFF: None MOTION CUT-OFF: None TRIAL DATE: May 3, 1992

I, LAURIE J. BARTILSON, hereby declare:

1. I am a member of the law firm of Bowles & Moxon and am an attorney admitted to practice in the State of California. My firm represents plaintiff Church of Scientology International ("Church") in the instant case. I am submitting this declaration in support of the Church's Motion for Order to Show Cause Why Gerald Armstrong Should Not Be Held in Contempt ("Motion") and

said Motion's accompanying memorandum of points and authorities ("Memorandum"). I have personal knowledge of the matters specified in this declaration and, if called upon to testify on such matters, would and could do so competently.

2. On May 28, 1992, this Court issued a preliminary injunction order ("May 28 Order") in this case which stated, in relevant part:

> Defendant Gerald Armstrong, his agents, and persons acting in concert or conspiracy with him (excluding attorneys at law who are not said defendant's agents or retained by him) are restrained and enjoined during the pendency of this suit pending further order of this court from doing directly or indirectly any of the following:
>
> Voluntarily assisting any person (not a governmental organ or entity) intending to make, intending to press, intending to arbitrate, or intending to litigate a claim against the persons referred to in sec. 1. of the "Mutual Release of All Claims and Settlement Agreement" of December 1986 regarding such claim or regarding pressing, arbitrating or litigating it.
>
> Voluntarily assisting any person (not a governmental organ or entity) arbitrating or litigating a claim against the persons referred to in sec. 1 of the "Mutual Release of All Claims and Settlement Agreement" of December, 1986.

A true and correct copy of the May 28 Order which I received from the Court is attached as Exhibit A in support of the Motion.

3. On June 5, 1992, I gave notice to Armstrong's lawyers, Ford Greene and Paul Morantz, of the May 28 Order. A true and correct copy of the Notice with exhibits and proofs of service is attached as Exhibit S in support of the Motion.

4. At a deposition of Gerald Armstrong ("Armstrong") in this case on June 24, 1992, he and my co-counsel, Andrew Wilson, had the following exchange regarding the December 1986 "Mutual

Release and Settlement Agreement" between the Church and Armstrong ("Settlement Agreement") and the May 28 Order:

> A. . . . I have absolutely no intention of honoring that settlement agreement. I cannot. I cannot logically. I cannot ethically. I cannot morally. I cannot psychically. I cannot philosophically. I cannot spiritually. I cannot in any way. And it is firmly my intention to not honor it.
>
> Q. No matter what a court says?
>
> A. No court can order it. They're going to have to kill me.

A true and correct copy of the relevant page of the transcript of that deposition, p. 124, accurately reflecting the statements of Armstrong and myself, is attached as Exhibit F to the Motion.

5. At a continuation of Armstrong's deposition in this case on October 7, 1992, Armstrong and I had the following exchange regarding the May 28 Order:

> Q. When was the next time you spoke to Mr. Welkos or Mr. Sappell?
>
> A. Around the time of the Sohigian ruling.
>
> Q. This is another telephone conversation?
>
> A. In that I only met Mr. Welkos on that one occasion, yes.
>
> Q. I apologize. You said that, and I forgot. And this was a conversation with Mr. Welkos?
>
> A. Yes
>
> Q. Did you call him, or did he call you?
>
> A. I believe I originated the conversation.
>
> Q. What did he say to you, and what did you say to him, during that conversation?
>
> A. I believe I advised him of the Sohigian ruling.

> Q. Did you discuss anything else with him?
>
> A. I think it was -- That's all that I recall being the subject of the discussion at that time.
>
> Q. Did you tell him that as a result of the Sohigian ruling, you now felt that you were more free to do things that you had been constrained about doing before?
>
> A. No, I never said that. Because I did not feel I was constrained before. But rather that by specifically denying the injunction as to all of those things which the organization sought in the preliminary injunction, that I was free from the potential of an injunction.

A true and correct copy of the relevant pages of the transcript of that deposition, pp. 378-379, accurately reflecting the statements of Armstrong and myself, is attached as part of Exhibit D to the Motion. On behalf of my client the Church, I allege that the statements made by Armstrong under oath as quoted in this paragraph and the paragraph immediately preceding in this declaration are acknowledgements by Armstrong of his awareness of the May 28 Order, his ability to act in compliance of such order and his intention to wilfully disobey its terms.

6. At a continuation of Armstrong's deposition in this case on July 22, 1992, he acknowledged to me under oath that he continued to be employed by Ford Greene as a paralegal. A true and correct copy of the relevant pages of the transcript of that deposition, pp. 186-189, accurately reflecting the statements of Armstrong and myself, is attached as Exhibit H to the Motion.

7. On July 7, 1992, I received in the mail a notice of association from Ford Greene announcing that he again represented Vicki and Richard Aznaran in the matter of Vicki Aznaran and Richard Aznaran v. Church of Scientology International, et al.

U.S. District Court, Central District of California No. CV-88-1786-JMI(Ex) ("Aznaran v. Church"). On that day, I sent Mr. Greene a letter by telecopier and first class mail. A true and correct copy of that letter is attached as Exhibit I to the Motion. In that letter, I requested that Mr. Greene inform me of the steps that had been and that would be taken to ensure that Armstrong did not violate the terms of the May 28 Order, in particular the prohibition that prevented Armstrong from assisting the Aznarans in their case.

8. On or about July 12, 1992, I received a letter from Mr. Greene, dated July 11, 1992, which responded to the above referenced letter of July 7, 1992. A true and correct copy of that letter is attached as Exhibit J to the Motion. In that letter, Mr. Greene pointedly declined to provide any specific assurances that Armstrong would not assist the Aznarans or any other anti-Church litigant or claimant in violation of the above-cited terms of the May 28 Order. Instead, he characterized the May 28 Order as "somewhat cryptic and difficult to enforce" and that as to Armstrong's compliance with said order, I "would simply have to take [Mr. Greene's] word for it."

9. In July, 1992, following my receipt of a copy of a ruling of Judge Ideman in Aznaran v. Church transferring that case from the Central District of California to the U.S. District Court in Dallas, Texas, I received a telephone call from Armstrong in which he stated that he was calling from Mr. Greene's office and that he needed to receive immediately by fax such transfer ruling of Judge Ideman. I told Armstrong that the May 28 Order prohibited him from assisting the Aznarans or any

other litigants against the Church. He replied that he was trying to help the Aznarans. On behalf of my client the Church, I allege that the statements made by Armstrong as relayed in this paragraph are acknowledgements by Armstrong of his awareness of the May 28 Order, his ability to act in compliance of such order and his intention to wilfully disobey its terms.

10. On July 18, 1992, I sent another letter to Mr. Greene by telecopier and first class mail, responding to his July 11, 1992 letter, accurately describing my above referenced July, 1992 conversation with Armstrong and reiterating that Armstrong was required to immediately cease all work for the Aznarans and to cease all actions in violation of the May 28 Order. A true and correct copy of that letter is attached as Exhibit K to the Motion.

11. I received no response to my July 18, 1992 letter from Mr. Greene. However, on or about August 1, 1992, I received two proofs of service for Mr. Greene's pleadings in the Aznaran v. Church case, each of which was executed by Armstrong. True and correct copies of those proofs of service are attached as Exhibit L to the Motion. On behalf of my client the Church, I allege that the actions taken by Armstrong as relayed in this paragraph are acknowledgements by Armstrong of his ability to act in compliance of the May 28 Order and his intention to wilfully disobey its terms.

12. In the continuation of Armstrong's deposition in this case on October 7 and 8, 1992, during which I further examined Armstrong, he made several additional admissions that I allege indicate his awareness of the May 28 Order, his ability to act in

compliance of such order and his intention to wilfully disobey its terms. These admissions include Armstrong's statements that he broadly discussed with the Aznarans matters relating to their case against the Church, that he assisted in the relay of communications between the Aznarans and Mr. Greene and that he was assisting three other persons, Tillie Good, Denise Cantin and Ed Roberts, each of whom is making claims, through Mr. Greene's office, against Churches of Scientology protected by the May 28 Order. A true and correct copy of the relevant pages of the transcript of this deposition, pp. 448-458, accurately reflecting the statements of Armstrong, Mr. Greene and myself, is attached as part of Exhibit D to the Motion. True and correct copies of Mr. Greene's demand letters against various Churches of Scientology on behalf of Ms. Good, Ms. Cantin and Mr. Roberts received by me and/or my firm are attached as Exhibits M, N and O respectively to the Motion.

13. On December 26, 1992, I received by U.S. mail a letter signed by Gerald Armstrong, dated December 22, 1992, and addressed to "David Miscavige and all other individuals who participate in the control of Scientology, C/O Laurie J. Bartilson, Esquire" ("December 22 Letter"). A true and correct copy of the December 22 Letter is attached to the moving papers as Exhibit G.

14. In what can only be described as deliberate harassment, Armstrong also sent copies of the letter to 35 individuals and groups, including anti-Church litigants, such as Vicki and Richard Aznaran, Larry Wollersheim and Joseph Yanny, and lawyers who represent clients in actions brought against one of more

churches, including Toby Plevin, John Elstead, and Dan Leipold.

15. Armstrong spends the bulk of the December 22 Letter vilifying the Church and its members, and threatening further breaches of the settlement agreement, and violations of the preliminary injunction, if his demands are not met. Although Armstrong has publicly disavowed any interest in money, he insists that the Church pay him $500,000 for his "legal fees and costs," "cancel" the settlement agreement, and pay unspecified amounts of money to other anti-Church litigants if the Church wishes to avoid Armstrong's threatened violations.

16. Specifically, Armstrong threatens that, if his demands are not met, that he will travel voluntarily to South Africa to testify against a church of Scientology, give interviews to the media, and voluntarily assist anyone and everyone opposing Churches that he can locate. [Id. pp. 3, 4, 6, 7, 8] Expressing the viewpoint that the May 28 Order places no restrictions whatsoever on his conduct, Armstrong states,

> I consider myself free to do anything anyone can, except testify absent a subpoena. Much of what I am permitted to do I am going to do. . . .
>
> I will continue to associate with and befriend all those people I consider you attack unjustly and senselessly. I will make my knowledge and support available to the Cult Awareness Network, a group of people of good will you vilify, in all the litigation you have fomented against them. . . . I will even make my knowledge and support available to entities like Time and people like Rich Behar in their defenses from your attacks.

[Exhibit G, p. 3].

17. The Cult Awareness Network is an anti-religious group that advocates the kidnapping and forcible "deprogramming" of individuals belonging to religions which they have identified as

"cults." While the Church is not presently suing the Cult Awareness Network in any litigation, the president of the Cult Awareness Network, Cynthia Kisser, has initiated an action against the Church and its president, Heber Jentzsch.

18. Richard Behar is the author of a Time cover story concerning the Church which ran in May, 1991. The Church is presently engaged in a lawsuit against Time and Behar for defamation.

19. In the December 22 Letter, Armstrong also makes plain the personal contempt which he has for a Court which would rule against him:

> There is also, as mentioned above, the fact that in order to defend myself from your attacks and to fund the defense of the litigation you have fomented I must speak and must publish. I'm sure you understand that I remain completely confident that no court, other than the odd one your mercenaries are able to compromise with bucks, babes or bull, will order me not to defend myself.

[Id. p. 5].

20. These recent pronouncements by Armstrong make plain that nothing short of a criminal contempt order is likely to end Armstrong's misconduct.

21. On December 30, 1992, I received a videotape identified by the initial speaker as a November 6, 1992 interview of Armstrong. Jerry Whitfield and others participated in such interview which, on information and belief, took place at the Los Angeles convention in early November, 1992 of the so-called "Cult Awareness Network" ("CAN"). A true and accurate copy of the video tape is attached and lodged as Exhibit Q to the Motion. A true and accurate transcript of the conversation between

Armstrong, Mr. Whitfield and others as reflected on said videotape is attached as Exhibit P to the Motion. During this recorded interview, Armstrong makes the following statement:

> . . . I cannot, except pursuant to a subpoena, assist someone intending to file a claim or pressing a claim against the organization. Now then we are appealing even that narrow ruling, because that's unenforceable because if you construe that my ... that this video could possibly indirectly help someone in the future, I can't do this. And not only that but if you consider that my existence indirectly or directly helps someone, then I'll oblige to take my own life. In other words, I must stop breathing. It's unenforceable. I feel I am completely at liberty to associate with whomever I want, to talk to whomever I want, and I act and live that way. And that is in part why I am here at this event now, why I came to the CAN conference.

Exhibit P, p. 34.

On behalf of my client the Church, I allege that the statements made by Armstrong as relayed in this paragraph are further acknowledgements by Armstrong of his awareness of the May 28 Order, his ability to act in compliance of such order and his intention to wilfully disobey its terms.

22. Mr. Whitfield is a defendant in the matter of Casillas v. Jerry Whitfield, et al., Los Angeles County Municipal Court No. 91K49349. My office represents Mr. Casillas in that action. Mr. Casillas is a staff member of the Church and is suing Mr. Whitfield and others for false imprisonment and false arrest.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 31st day of December, 1992 at Los Angeles, California.

H:\ARMSTRON\BART.DEC

Laurie J. Bartilson

DECLARATION OF KENDRICK L. MOXON

I, KENDRICK L. MOXON, hereby depose and state:

1. I am an attorney licensed to practice in the State of California. I am a partner in the law firm of Bowles & Moxon, which represents Plaintiff, Church of Scientology International, in the case of Church of Scientology International vs. Gerald Armstrong, et al., LASC Case No. BC 052395. I have personal knowledge of the matters stated herein and, if called upon to testify thereto, could and would competently do so.

2. On Wednesday morning, December 30, 1992, at 11:55 a.m., I telephoned to and spoke with Ford Greene, counsel for Defendant, Gerald Armstrong. I informed Mr. Greene that Plaintiff would appear at 1:30 p.m. on Thursday, December 31, 1992 in Department 88 of the Superior Court of the State of California for the County of Los Angeles on an ex parte basis in order to seek an Order to Show Cause Why Gerald Armstrong Should Not Be Held in Contempt. I put Mr. Greene on notice of that appearance.

3. Although the papers in support of the application were not yet completed on December 30, 1992, my office faxed to Mr. Greene, at his request, a draft of the application and points and authorities in support thereof on the evening of December 30, 1992.

I declare under penalty of perjury under the laws of the

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State of California that the foregoing is true and correct.

Executed this 31st day of December, 1992 at Los Angeles, California.

KENDRICK L. MOXON

DEPT. 88

SUPERIOR COURT OF CALIFORNIA , COUNTY OF LOS ANGELES

Date: May 28, 1992
Honorable **Ronald M. Sohigian**, Judge
1

M. Cervantes, Deputy Clerk
None (E.R.M.)

BC 052395

(Parties and Counsel checked if present)

Church of Scientology, International

vs.

Gerald Armstrong, et al.

Counsel For Plaintiff

Counsel For Defendant

No Appearances

NATURE OF PROCEEDINGS: RULING ON MATTER TAKEN UNDER SUBMISSION ON MAY 27, 1992

In this matter heretofore taken under submission on May 27, 1992, the court now makes the following ruling.

1 Plaintiff's legal remedies are inadequate insofar as the scope of relief ordered below is concerned, but not otherwise. CCP 526(4) and (5).

2 The threatened acts which are restrained by the order referred to below, but only those threatened acts, would do irreparable harm to plaintiff which could not be compensated by monetary damages. CCP 526(2).

3 On the basis of the instant record, there is a reasonable probability that plaintiff will prevail after trial of this case in the respects restrained by this order. CCP 526(1); cf., San Francisco Newspaper Printing Co., Inc. vs. Superior Court (Miller) (1985) 170 Cal. App. 3d 438.

4 Plaintiff is likely to suffer greater injury from denial of the preliminary injunction the terms of which are set out below than the injury which defendant is likely to suffer if it is granted. See Robbins vs. Superior Court (County of Sacramento) (1985) 38 Cal. 3d 199, 206.

5 The granting of a preliminary injunction in the terms set out below will preserve the status quo pending trial.

DEPT. 88

SUPERIOR COURT OF CALIFORNIA , COUNTY OF LOS ANGELES

Date: May 28, 1992 Honorable **Ronald M. Sohigian,** Judge 1a	M. Cervantes, Deputy Clerk None (E.R.M.)

BC 052395 (Parties and Counsel checked if present)

Church of Scientology, International

vs.

Gerald Armstrong, et al.

Counsel For Plaintiff

Counsel For Defendant

No Appearances

NATURE OF PROCEEDINGS: RULING ON MATTER TAKEN UNDER SUBMISSION ON MAY 27, 1992

6 Application for preliminary injunction is granted in part, in the following respects only.

> Defendant Gerald Armstrong, his agents, and persons acting in concert or conspiracy with him (excluding attorneys at law who are not said defendant's agents or retained by him) are restrained and enjoined during the pendency of this suit pending further order of court from doing directly or indirectly any of the following:
>
> > Voluntarily assisting any person (not a governmental organ or entity) intending to make, intending to press, intending to arbitrate, or intending to litigate a claim against the persons referred to in sec. 1 of the "Mutual Release of All Claims and Settlement Agreement" of December, 1986 regarding such claim or regarding pressing, arbitrating, or litigating it.
> >
> > Voluntarily assisting any person (not a governmental organ or entity) arbitrating or litigating a claim against the persons referred to in sec. 1 of the "Mutual Release of All Claims and Settlement Agreement" of December, 1986.
>
> The court does not intend by the foregoing to prohibit defendant Armstrong from: (a) being reasonably available for the service of subpoenas on him; (b) accepting service of subpoenas on him without physical resistance, obstructive tactics, or flight; (c) testifying fully and fairly in response to properly put questions either in deposition, at trial, or in other legal or arbitration proceedings; (d) properly reporting or disclosing to authorities criminal conduct of the persons referred to in sec. 1 of the "Mutual Release of All Claims and Settlement Agreement" of December, 1986; or (e) engaging in gainful employment rendering clerical or paralegal services not contrary to the terms and conditions of this order.

DEPT. 88

SUPERIOR COURT OF CALIFORNIA , COUNTY OF LOS ANGELES

Date: May 28, 1992
Honorable **Ronald M. Sohigian,** Judge
1b

M. Cervantes, Deputy Clerk
None (E.R.M.)

BC 052395

(Parties and Counsel checked if present)

Church of Scientology, International
vs.
Gerald Armstrong, et al.

Counsel For Plaintiff

Counsel For Defendant

No Appearances

NATURE OF PROCEEDINGS: RULING ON MATTER TAKEN UNDER SUBMISSION ON MAY 27, 1992

The application for preliminary injunction is otherwise denied.

7 The restraints referred to in sec. 6, above, will become effective upon plaintiff's posting an undertaking in the sum of $70,000 pursuant to CCP 529(a) by 12:00 noon on June 5, 1992.

8 The restraints referred to in sec. 6, above, properly balance and accommodate the policies inherent in: (a) the protectable interests of the parties to this suit; (b) the protectable interests of the public at large; (c) the goal of attaining full and impartial justice through legitimate and properly informed civil and criminal judicial proceedings and arbitrations; (d) the gravity of interest involved in what the record demonstrates defendant might communicate in derogation of the contractual language; and (e) the reasonable interpretation of the "Mutual Release of All Claims and Settlement Agreement" of December, 1986. The fair interpretation of all the cases cited by the parties indicates that this is the correct decisional process. The law appropriately favors settlement agreements. Obviously, one limitation on freedom of contract is "public policy"; in determining what the scope of the public policy limitation on the parties' rights to enforcement of their agreement in the specific factual context of this case, the court has weighed the factors referred to in the first sentence of this section. Litigants have a substantial range of contractual freedom, even to the extent of agreeing not to assert or exercise rights which they might otherwise have. The instant record shows that plaintiff was substantially compensated as an aspect of the agreement, and does not persuasively support defendant's claim of duress or that the issues involved in this preliminary injunction proceeding were precluded by any prior decision.

DEPT. 88

SUPERIOR COURT OF CALIFORNIA , COUNTY OF LOS ANGELES

Date: May 28, 1992 Honorable **Ronald M. Sohigian,** Judge 1c	**M. Cervantes, Deputy Clerk** **None** (E.R.M.)

BC 052395

(Parties and Counsel checked if present)

Church of Scientology, International

vs.

Gerald Armstrong, et al.

Counsel For Plaintiff

Counsel For Defendant

No Appearances

NATURE OF PROCEEDINGS: RULING ON MATTER TAKEN UNDER SUBMISSION ON MAY 27, 1992

9 The court does not dispositively decide the underlying merits of the case except for this preliminary determination. CCP 526(1); Baypoint Mortgage Corp. vs. Crest Premium Real Estate etc. Trust (1985) 168 Cal. App. 3d 818, 823.

10 Plaintiff is ordered give written notice by mail by June 5, 1992, including in that written notice a statement regarding whether plaintiff has or has not posted the undertaking referred to in sec. 7, above, and attaching to that written notice evidence showing that the undertaking has been posted if that is the fact.

DATED: May 28, 1992.

RONALD M. SOHIGIAN

RONALD M. SOHIGIAN
Judge of the Superior Court

A copy of this minute order is sent to counsel via United States mail this date.

MUTUAL RELEASE OF ALL CLAIMS AND SETTLEMENT AGREEMENT

1. This Mutual Release of All Claims and Settlement Agreement is made between Church of Scientology International (hereinafter "CSI") and Gerald Armstrong, (hereinafter "Plaintiff") Cross-Complainant in Gerald Armstrong v. Church of Scientology of California, Los Angeles Superior Court, Case No. 420 153. By this Agreement, Plaintiff hereby specifically waives and releases all claims he has or may have from the beginning of time to and including this date, including all causes of action of every kind and nature, known or unknown for acts and/or omissions against the officers, agents, representatives, employees, volunteers, directors, successors, assigns and legal counsel of CSI as well as the Church of Scientology of California, its officers, agents, representatives, employees, volunteers, directors, successors, assigns and legal counsel; Religious Technology Center, its officers, agents, representatives, employees, volunteers, directors, successors, assigns and legal counsel; all Scientology and Scientology affiliated organizations and entities and their officers, agents, representatives, employees, volunteers, directors, successors, assigns and legal counsel; Author Services, Inc., its officers, agents, representatives, employees, volunteers, directors, successors, assigns and legal counsel; L. Ron Hubbard, his heirs, beneficiaries, Estate and its executor; Author's Family Trust, its beneficiaries and its trustee; and Mary Sue Hubbard, (all hereinafter collectively referred to as the

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Ex 1 A.

"Releasees"). The parties to this Agreement hereby agree as follows:

2. It is understood that this settlement is a compromise of doubtful and disputed claims, and that any payment is not to be construed, and is not intended, as an admission of liability on the part of any party to this Agreement, specifically, the Releasees, by whom liability has been and continues to be expressly denied. In executing this settlement Agreement, Plaintiff acknowledges that he has released the organizations, individuals and entities listed in the above paragraph, in addition to those defendants actually named in the above lawsuit, because among other reasons, they are third party beneficiaries of this Agreement.

3. Plaintiff has received payment of a certain monetary sum which is a portion of a total sum of money paid to his attorney, Michael J. Flynn. The total sum paid to Mr. Flynn is to settle all of the claims of Mr. Flynn's clients. Plaintiff's portion of said sum has been mutually agreed upon by Plaintiff and Michael J. Flynn. Plaintiff's signature below this paragraph acknowledges that Plaintiff is completely satisfied with the monetary consideration negotiated with and received by Michael J. Flynn. Plaintiff acknowledges that there has been a block settlement between Plaintiff's attorney, Michael J. Flynn, and the Church of Scientology and Churches and entities related to the Church of Scientology, concerning all of Mr. Flynn's clients who were in litigation with any Church of Scientology or related entity. Plaintiff has received a portion of this block

amount, the receipt of which he hereby acknowledges. Plaintiff understands that this amount is only a portion of the block settlement amount. The exact settlement sum received by Plaintiff is known only to Plaintiff and his attorney, Michael J. Flynn, and it is their wish that this remain so and that this amount remain confidential.

Signature line for Gerald Armstrong

4. For and in consideration of the above described consideration, the mutual covenants, conditions and release contained herein, Plaintiff does hereby release, acquit and forever discharge, for himself, his heirs, successors, executors, administrators and assigns, the Releasees, including Church of Scientology of California, Church of Scientology International, Religious Technology Center, all Scientology and Scientology affiliated organizations and entities, Author Services, Inc. (and for each organization or entity, its officers, agents, representatives, employees, volunteers, directors, successors, assigns and legal counsel); L. Ron Hubbard, his heirs, beneficiaries, Estate and its executor; Author's Family Trust, its beneficiaries and trustee; and Mary Sue Hubbard, and each of them, of and from any and all claims, including, but not limited to, any claims or causes of action entitled Gerald Armstrong v. Church of Scientology of California, Los Angeles Superior Court, Case No. 420 153 and all demands, damages, actions and causes of actions of every kind and nature, known or unknown,

for or because of any act or omission allegedly done by the Releasees, from the beginning of time to and including the date hereof. Therefore, Plaintiff does hereby authorize and direct his counsel to dismiss with prejudice his claims now pending in the above referenced action. The parties hereto will execute and cause to be filed a joint stipulation of dismissal in the form of the one attached hereto as Exhibit "A".

A. It is expressly understood by Plaintiff that this release and all of the terms thereof do not apply to the action brought by the Church of Scientology against Plaintiff for Conversion, Fraud and other causes of action, which action has already gone to trial and is presently pending before the Second District, Third Division of the California Appellate Court (Appeal No. B005912). The disposition of those claims are controlled by the provisions of the following paragraph hereinafter.

B. As of the date this settlement Agreement is executed, there is currently an appeal pending before the California Court of Appeal, Second Appellate District, Division 3, arising out of the above referenced action delineated as Appeal No. B005912. It is understood that this appeal arises out of the Church of Scientology's complaint against Plaintiff which is not settled herein. This appeal shall be maintained notwithstanding this Agreement. Plaintiff agrees to waive any rights he may have to take any further appeals from any decision eventually reached by the Court of Appeal or any rights he may have to oppose (by responding brief or any other means) any further appeals taken by the Church of

Scientology of California. The Church of Scientology of California shall have the right to file any further appeals it deems necessary.

5. For and in consideration of the mutual covenants, conditions and release contained herein, and Plaintiff dismissing with prejudice the action Gerald Armstrong v. Church of Scientology of California, Los Angeles Superior Court, Case No. 420 153, the Church of Scientology of California does hereby release, acquit and forever discharge for itself, successors and assigns, Gerald Armstrong, his agents, representatives, heirs, successors, assigns, legal counsel and estate and each of them, of and from any and all claims, causes of action, demands, damages and actions of every kind and nature, known or unknown, for or because of any act or omission allegedly done by Gerald Armstrong from the beginning of time to and including the date hereof.

6. In executing this Agreement, the parties hereto, and each of them, agree to and do hereby waive and relinquish all rights and benefits afforded under the provisions of Section 1542 of the Civil Code of the State of California, which provides as follows:

> "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

7. Further, the undersigned hereby agree to the following:

A. The liability for all claims is expressly denied by the parties herein released, and this final compromise and settlement thereof shall never be treated as an admission of liability or responsibility at any time for any purpose.

B. Plaintiff has been fully advised and understands that the alleged injuries sustained by him are of such character that the full extent and type of injuries may not be known at the date hereof, and it is further understood that said alleged injuries, whether known or unknown at the date hereof, might possibly become progressively worse and that as a result, further damages may be sustained by Plaintiff; nevertheless, Plaintiff desires by this document to forever and fully release the Releasees. Plaintiff understands that by the execution of this release no further claims arising out of his experience with, or actions by, the Releasees, from the beginning of time to and including the date hereof, which may now exist or which may exist in the future may ever be asserted by him or on his behalf, against the Releasees.

C. Plaintiff agrees to assume responsibility for the payment of any attorney fee, lien or liens, imposed against him past, present, or future, known or unknown, by any person, firm, corporation or governmental entity or agency as a result of, or growing out of any of the matters referred to in this release. Plaintiff further agrees to hold harmless the parties herein released, and each of them, of and from any liability arising therefrom.

D. Plaintiff agrees never to create or publish or attempt to publish, and/or assist another to create for publication by means of magazine, article, book or other similar form, any writing or to broadcast or to assist another to create, write, film or video tape or audio tape any show, program or movie, or to grant interviews or discuss with others, concerning their experiences with the Church of Scientology, or concerning their personal or indirectly acquired knowledge or information concerning the Church of Scientology, L. Ron Hubbard or any of the organizations, individuals and entities listed in Paragraph 1 above. Plaintiff further agrees that he will maintain strict confidentiality and silence with respect to his experiences with the Church of Scientology and any knowledge or information he may have concerning the Church of Scientology, L. Ron Hubbard, or any of the organizations, individuals and entities listed in Paragraph 1 above. Plaintiff expressly understands that the non-disclosure provisions of this subparagraph shall apply, inter alia, but not be limited, to the contents or substance of his complaint on file in the action referred to in Paragraph 1 hereinabove or any documents as defined in Appendix "A" to this Agreement, including but not limited to any tapes, films, photographs, recastings, variations or copies of any such materials which concern or relate to the religion of Scientology, L. Ron Hubbard, or any of the organizations, individuals, or entities listed in Paragraph 1 above. The attorneys for Plaintiff, subject to the ethical limitations restraining them as promulgated by the state or federal regulatory associations or agencies, agree not to disclose any of the terms and conditions of the settlement negotiations, amount of the settlement, or statements made by either party during settlement conferences. Plaintiff agrees that if the terms of this paragraph are breached by him, that CSI and the other Releasees would be entitled to liquidated damages in the amount of $50,000 for each such breach. All monies received to induce or in payment for a breach of this Agreement, or any part thereof, shall be held in a constructive trust pending the outcome of any litigation over said breach. The amount of liquidated damages herein is an estimate of the damages that each party would suffer in the event this Agreement is breached. The reasonableness of the amount of such damages are hereto acknowledged by Plaintiff.

E. With exception to the items specified in Paragraph 7(L), Plaintiff agrees to return to the Church of Scientology International at the time of the consummation of this Agreement, all materials in his possession, custody or control (or within the possession, custody or control of his attorney, as well as third parties who are in possession of the described documents), of any nature, including originals and all copies or summaries of documents defined in Appendix "A" to this Agreement, including but not limited to any tapes, computer disks, films, photographs, recastings, variations or copies of any such materials which concern or relate to the religion of Scientology, L. Ron Hubbard or any of the organizations, individuals or entities listed in Paragraph 1 above, all evidence of any nature, including evidence obtained from the named defendants through discovery, acquired for the purposes of this lawsuit or any lawsuit, or acquired for any other purpose concerning any Church of Scientology, any financial or administrative materials concerning any Church of Scientology, and any materials relating personally to L. Ron Hubbard, his family, or his estate. In addition to the documents and other items to be returned to the Church of Scientology International listed above and in Appendix "A", Plaintiff agrees to return the following:

(a) All originals and copies of the manuscript for the work "Excalibur" writteh by L. Ron Hubbard;

(b) All originals and copies of documents commonly known as the "Affirmations" written by L. Ron Hubbard; and

(c) All documents and other items surrendered to the Court by Plaintiff and his attorneys pursuant to Judge Cole's orders of August 24, 1982 and September 4, 1982 and all documents and other items taken by the Plaintiff from either the Church of Scientology or Omar Garrison. This includes all documents and items entered into evidence or marked for identification in Church of Scientology of California v. Gerald Armstrong, Case No. C 420 153. Plaintiff and his attorney will execute a Joint Stipulation or such other documents as are necessary to obtain these documents from the Court. In the event any documents or other items are no longer in the custody or control of the Los Angeles Superior Court, Plaintiff and his counsel will assist the Church in recovering these documents as quickly as possible, including but not limited to those tapes and other documents now in the possession of the United States District Court in the case of United States v. Zolin, Case No. CV

85-0440-HLH(Tx), presently on appeal in the Ninth Circuit Court of Appeals. In the event any of these documents are currently lodged with the Court of Appeal, Plaintiff and his attorneys will cooperate in recovering those documents as soon as the Court of Appeal issues a decision on the pending appeal.

To the extent that Plaintiff does not possess or control documents within categories A-C above, Plaintiff recognizes his continuing duty to return to CSI any and all documents that fall within categories A-C above which do in the future come into his possession or control.

F. Plaintiff agrees that he will never again seek or obtain spiritual counselling or training or any other service from any Church of Scientology, Scientologist, Dianetics or Scientology auditor, Scientology minister, Mission of Scientology, Scientology organization or Scientology affiliated organization.

G. Plaintiff agrees that he will not voluntarily assist or cooperate with any person adverse to Scientology in any proceeding against any of the Scientology organizations, individuals, or entities listed in Paragraph 1 above. Plaintiff also agrees that he will not cooperate in any manner with any organizations aligned against Scientology.

H. Plaintiff agrees not to testify or otherwise participate in any other judicial, administrative or legislative proceeding adverse to Scientology or any of the Scientology Churches, individuals or entities listed in Paragraph 1 above unless compelled to do so by lawful subpoena or other lawful process. Plaintiff shall not make himself amenable to service of any such subpoena in a manner which invalidates the intent of this provision. Unless required to do so by such subpoena, Plaintiff agrees not to discuss this litigation or his experiences with and knowledge of the Church with anyone other than members of his immediate family. As provided hereinafter in Paragraph 18(d), the contents of this Agreement may not be disclosed.

I. The parties hereto agree that in the event of any future litigation between Plaintiff and any of the organizations, individuals or entities listed in Paragraph 1 above, that any past action or activity, either alleged in this lawsuit or activity similar in fact to the evidence that was developed during the course of this lawsuit, will not be used by either party against the other in any future litigation. In other words, the "slate" is wiped clean concerning past actions by any party.

J. It is expressly understood and agreed by Plaintiff that any dispute between Plaintiff and his counsel as to the proper division of the sum paid to Plaintiff by his attorney of record is between Plaintiff and his attorney of record and shall in no way affect the validity of this Mutual Release of All Claims and Settlement Agreement.

K. Plaintiff hereby acknowledges and affirms that he is not under the influence of any drug, narcotic, alcohol or other mind-influencing substance, condition or ailment such that his ability to fully understand the meaning of this Agreement and the significance thereof is adversely affected.

L. Notwithstanding the provisions of Paragraph 7(E) above, Plaintiff shall be entitled to retain any artwork created by him which concerns or relates to the religion of Scientology, L. Ron Hubbard or any of the organizations, individuals or entities listed in Paragraph 1 above provided that such artwork never be disclosed either directly or indirectly, to anyone. In the event of a disclosure in breach of this Paragraph 7(L), Plaintiff shall be subject to the liquidated damages and constructive trust provisions of Paragraph 7(D) for each such breach.

8. Plaintiff further agrees that he waives and relinquishes any right or claim arising out of the conduct of any defendant in this case to date, including any of the organizations, individuals or entities as set forth in Paragraph 1 above, and the named defendants waive and relinquish any right or claim arising out of the conduct of Plaintiff to date.

9. This Mutual Release of All Claims and Settlement Agreement contains the entire agreement between the parties hereto, and the terms of this Agreement are contractual and not a mere recital. This Agreement may be amended only by a written instrument executed by Plaintiff and CSI. The parties hereto have carefully read and understand the contents of this Mutual Release of All Claims and Settlement Agreement and sign the same of their own free will, and it is the intention of the parties to be legally bound hereby. No other prior or contemporaneous agreements, oral or written, respecting such matters, which are not specifically

incorporated herein shall be deemed to in any way exist or bind any of the parties hereto.

10. Plaintiff agrees that he will not assist or advise anyone, including individuals, partnerships, associations, corporations, or governmental agencies contemplating any claim or engaged in litigation or involved in or contemplating any activity adverse to the interests of any entity or class of persons listed above in Paragraph 1 of this Agreement.

11. The parties to this Agreement acknowledge the following:

A. That all parties enter into this Agreement freely, voluntarily, knowingly and willingly, without any threats, intimidation or pressure of any kind whatsoever and voluntarily execute this Agreement of their own free will;

B. That all parties have conducted sufficient deliberation and investigation, either personally or through other sources of their own choosing, and have obtained advice of counsel regarding the terms and conditions set forth herein, so that they may intelligently exercise their own judgment in deciding whether or not to execute this Agreement; and

C. That all parties have carefully read this Agreement and understand the contents thereof and that each reference in this Agreement to any party includes successors, assigns, principals, agents and employees thereof.

12. Each party shall bear its respective costs with respect to the negotiation and drafting of this Agreement and

all acts required by the terms hereof to be undertaken and performed by that party.

13. To the extent that this Agreement inures to the benefit of persons or entities not signatories hereto, this Agreement is hereby declared to be made for their respective benefits and uses.

14. The parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Agreement.

15. This Agreement shall not be construed against the party preparing it, but shall be construed as if both parties prepared this Agreement. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

16. In the event any provision hereof be unenforceable, such provision shall not affect the enforceability of any other provision hereof.

17. All references to the plural shall include the singular and all references to the singular shall include the plural. All references to gender shall include both the masculine and feminine.

18.(A) Each party warrants that they have received independent legal advice from their attorneys with respect to the advisability of making the settlement provided for herein and in executing this Agreement.

(B) The parties hereto (including any officer, agent, employee, representative or attorney of or for any party) acknowledge that they have not made any statement, representation or promise to the other party regarding any fact material to this Agreement except as expressly set forth herein. Furthermore, except as expressly stated in this Agreement, the parties in executing this Agreement do not rely upon any statement, representation or promise by the other party (or of any officer, agent, employee, representative or attorney for the other party).

(C) The persons signing this Agreement have the full right and authority to enter into this Agreement on behalf of the parties for whom they are signing.

(D) The parties hereto and their respective attorneys each agree not to disclose the contents of this executed Agreement. Nothing herein shall be construed to prevent any party hereto or his respective attorney from stating that this civil action has been settled in its entirety.

(E) The parties further agree to forbear and refrain from doing any act or exercising any right, whether existing now or in the future, which act or exercise is inconsistent with this Agreement.

19. Plaintiff has been fully advised by his counsel as to the contents of this document and each provision hereof. Plaintiff hereby authorizes and directs his counsel to dismiss with prejudice his claims now pending in the action entitled Gerald Armstrong v. Church of Scientology of California, Los Angeles Superior Court, Case No. 420 153.

20. Notwithstanding the dismissal of the lawsuit pursuant to Paragraph 4 of this Agreement, the parties hereto agree that the Los Angeles Superior Court shall retain

jurisdiction to enforce the terms of this Agreement. This Agreement may be enforced by any legal or equitable remedy, including but not limited to injunctive relief or declaratory judgment where appropriate. In the event any party to this Agreement institutes any action to preserve, to protect or to enforce any right or benefit created hereunder, the prevailing party in any such action shall be entitled to the costs of suit and reasonable attorney's fees.

21. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be a duplicate original, but all of which, together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, on the date opposite their names.

Dated: December 6, 1986

GERALD ARMSTRONG

Witness

Witness

Dated: 12/6/86

APPROVED AS TO FORM AND CONTENT:

M. J. Flynn

MICHAEL J. FLYNN
Attorney for
GERALD ARMSTRONG

Dated: December 11, 1986

Heber C. Jentzsch for
CHURCH OF SCIENTOLOGY
INTERNATIONAL

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

--000--

STEVEN HUNZIKER, KATE SCHUCHMANN, VIRGINIA SANDERS,

PLAINTIFFS,

vs.

APPLIED MATERIALS, INC., A DELAWARE CORPORATION; APPLIED SCHOLASTICS, INC., A CALIFORNIA CORPORATION; WORLD INSTITUTE OF SCIENTOLOGY ENTERPRISES, A FLORIDA CORPORATION; JAMES MORGAN, LINDA OXMAN, GLEN TONEY, JAMES DELONG, NANCY DEVITA, ANN BRANNAN, JOHN KANE, JAMES BAGLEY, INGRID GUDENAS, BOB JOHNSON, STEVE REA, JIM RYAN, GLEN SOPP, AND DOES 1 THROUGH 100, INCLUSIVE,

DEFENDANTS.

NO. 692629

COPY

DEPOSITION OF GERALD ARMSTRONG

THURSDAY, MARCH 12TH, 1992

VOLUME II

(PAGES 183 - 337)

REPORTED BY:

JUDITH S. DOUTHIT, CSR #4531

STEVEN, IF IT WAS LATE AT NIGHT OR SOMETHING LIKE THAT. I THINK IT MAY HAVE BEEN THAT IT WAS AT NIGHT WHEN I WANTED IT AND I -- BUT THAT WAS THE ONLY REASON THAT I CALLED HIM.

Q. AND DID YOU TALK AT ALL ABOUT ANYTHING RELATING TO YOUR TESTIMONY?

A. NO, NOTHING SUBSTANTIVE, ANYWAY.

Q. HOW LONG WAS YOUR CONVERSATION?

A. WITH STEVEN?

Q. YES.

A. OH, VERY BRIEF. A MINUTE MAYBE.

Q. DO YOU REMEMBER ANYTHING HE SAID TO YOU?

A. NO. HE HAD THE NUMBER. HE GAVE ME THE NUMBER, AND I DON'T THINK THAT WE DISCUSSED ANYTHING BEYOND THAT.

Q. NOW, WHAT -- SO YOU'VE HAD ONLY ONE CONVERSATION WITH HIM SINCE THE LAST DEPOSITION?

A. RIGHT.

Q. AND MR. ELSTEAD, HOW MANY TIMES HAVE YOU TALKED TO HIM SINCE THE LAST DEPOSITION?

A. I THINK THREE, THREE TIMES. ONCE BY PHONE. IT COULD BE FOUR TIMES. HE CALLED ME, URGING ME TO GET THE MATERIALS READY, PRAYING THAT I COULD DO IT BEFORE THE 18TH, BECAUSE HE THOUGHT HE WOULD RUN INTO DIFFICULTIES IF IT WENT UNTIL THE 18TH.

AND THEN ME CALLING HIM TO MAKE ARRANGEMENTS TO DELIVER TO HIM THE DOCUMENTS WHICH WE HAVE HERE TODAY.

AND THEN I MET HIM BRIEFLY AS I WALKED IN TODAY.

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PICKED UP THE DOCUMENTS FROM HIM IN HIS OFFICE.

Q. OKAY, NOW WHEN DID HE CALL YOU, URGING YOU TO GET READY BEFORE THE 18TH? BECAUSE WE HAD ORIGINALLY SCHEDULED THIS DEPOSITION ON THE 18TH; CORRECT?

A. RIGHT, BUT THERE WAS, AS YOU MENTIONED EARLIER, THERE WAS THIS TALK OF A NEED TO GET IT DONE.

Q. EARLIER?

A. EARLIER.

Q. RIGHT. SO WHEN DID HE CALL YOU AND ASK YOU TO GET IT DONE BY THE 12TH INSTEAD OF THE 18TH?

A. MAYBE LAST FRIDAY.

Q. OKAY.

A. PERHAPS.

Q. AND THEN YOU --

A. AND THEN WE CONNECTED AGAIN ON SUNDAY. SUNDAY WAS WHEN I DELIVERED THE DOCUMENTS TO HIM.

Q. AND WHERE WAS THAT?

A. IN OAKLAND.

Q. WHERE IN OAKLAND?

A. MONTCLAIR AREA GENERALLY.

Q. WHAT DO YOU MEAN THE "MONTCLAIR AREA GENERALLY"? WAS IT AT SOMEONE'S HOUSE?

A. NO, IT WAS JUST WE -- I CALLED HIM UP AND WE AGREED TO MEET AT A PARTICULAR PLACE.

Q. WHERE WAS THAT?

A. WELL, IT HAPPENED TO BE IN A PARKING LOT, THE

PLACE.

Q. SO YOU DELIVERED ALL OF THESE DOCUMENTS THAT YOU HAVE HERE?

A. EVERYTHING THAT I'VE GIVEN YOU TODAY.

Q. SO SINCE SUNDAY, YOU HAVEN'T LOOKED AT ANY OF THIS?

A. RIGHT.

Q. SO YOU DID YOUR WORK ON THESE DOCUMENTS BETWEEN FRIDAY AND SUNDAY, OVER THE LAST WEEKEND?

A. CORRECT.

Q. AND DID YOU HAVE TO TRAVEL SOMEWHERE TO GET THESE DOCUMENTS? YOU HAD SAID BEFORE YOU HAD TO TAKE A TRIP TO GET THE DOCUMENTS?

A. NO, I TOLD YOU THAT I HAVE TO TAKE A TRIP, AND I HAVE TO DO THAT THIS WEEKEND, BUT THAT DOESN'T FALL BEFORE THE 12TH. SO I AM LIMITED TO THIS SET OF DOCUMENTS, WHICH I HAD IN THE GENERAL GEOGRAPHIC AREA WHERE I LIVE, IN MARIN.

Q. NOW, WHAT DID YOU TALK TO MR. ELSTEAD ABOUT WHEN YOU MET HIM IN OAKLAND?

A. I DESCRIBED -- I ROUGHLY DESCRIBED THE DOCUMENTS. I SHOWED HIM THE VARIOUS GROUPINGS OF THE DOCUMENTS. AND BEYOND THAT WE JUST PARTED. I TOOK THE BOX OF DOCUMENTS FROM THE TRUNK OF MY CAR, CARRIED THEM TO HIS CAR. WE SPENT A COUPLE MINUTES.

Q. OKAY, AND THAT'S THE SUM TOTAL OF THE TIMES YOU'VE TALKED TO MR. ELSTEAD?

AND ASSOCIATES, WHETHER ANY OF THOSE STUDENTS HAVE EVER TURNED TO THE CHURCH OF SCIENTOLOGY?

A. I HAVE NO INFORMATION.

Q. DO YOU HAVE ANY IDEA WHETHER ANYBODY HAS EVER TAKEN FURTHER COURSES, AFTER TAKING THE TIME MANAGEMENT COURSE?

A. NO INFORMATION.

Q. SO YOU'VE NOW GIVEN ME THE SUM TOTAL OF YOUR TESTIMONY AND THE SOURCES YOU'VE CITED THAT YOU'VE GIVEN TO US WITH RESPECT TO THESE THREE TOPICS?

A. I'VE DONE THAT, AND I'VE PROVIDED YOU A MASS OF DOCUMENTS, SOME OF WHICH WE HAVE NOT HAD THE TIME TO GO OVER YET.

Q. OKAY. NOW, YOU MENTIONED EARLIER THAT YOU BELIEVE THERE'S SOME KIND OF TEMPORARY RESTRAINING ORDER THAT MAY KEEP YOU FROM DOING SOMETHING WITH RESPECT TO THE CHURCH OF SCIENTOLOGY; IS THAT RIGHT?

A. I'M NOT CERTAIN.

Q. DO YOU HAVE ANY OPINION ABOUT WHETHER THAT TEMPORARY RESTRAINING ORDER WOULD RESTRAIN YOU FROM TESTIFYING IN THIS CASE?

A. I -- I DOUBT IT.

Q. WHY DO YOU SAY THAT, IF YOU DON'T KNOW WHAT THE TEMPORARY RESTRAINING ORDER SAYS?

A. WELL, JUST BECAUSE I DOUBT THAT I COULD BE RESTRAINED FROM TESTIFYING. I KNOW THAT THEY MAY ATTEMPT TO

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DO THAT, BUT I THINK THAT NO MATTER HOW BIG SCIENTOLOGY IS, I DON'T THINK THAT IT WILL WEAR DOWN THE U.S. JUSTICE SYSTEM.

Q. WHAT DO YOU MEAN BY THAT?

A. WELL, I THINK THAT NO MATTER WHAT SCIENTOLOGY DOES, IF I WERE ORDERED TO TESTIFY, I THINK THAT THAT WOULD --

Q. ORDERED BY WHOM TO TESTIFY?

A. ORDERED BY SUBPENA, ORDERED BY A COURT.

Q. BUT YOU HAVEN'T BEEN SUBPENAED TO TESTIFY HERE TODAY; YOU KNOW THAT; CORRECT? YOU'VE RECEIVED NO SUBPENA?

A. FOR TODAY?

Q. RIGHT, AND FOR LAST TIME WHEN YOU WERE DEPOSED.

A. I DIDN'T -- I MEAN, YOU ISSUED A NOTICE OF SUBPENA -- OR NOTICE OF DEPOSITION; RIGHT?

Q. RIGHT. YOU'VE NEVER RECEIVED A SUBPENA TO TESTIFY?

A. I HAVE A SUBPENA FOR TODAY.

Q. WHAT DOES THE SUBPENA LOOK LIKE? WHO ISSUED THAT?

A. JOHN ELSTEAD.

Q. I'VE SEEN NO SUBPENA.

A. I DON'T KNOW. MAYBE YOU DIDN'T GET A COPY.

Q. WHEN DID YOU TALK TO JOHN ELSTEAD ABOUT A SUBPENA?

A. I THINK HE JUST FILLED IT OUT THIS MORNING.

Q. DID YOU ASK HIM FOR A SUBPENA?

A. I BELIEVE THAT I -- THAT I TOLD HIM THAT THERE MAY BE A TRO ISSUED WHEN I FIRST LEARNED OF IT.

Q. WHEN WAS THAT?

A. LIKE I TOLD YOU, THE ONLY THING I'VE SEEN, WHICH ISN'T OFFICIAL, IS A STATEMENT BY SCIENTOLOGY'S LAWYER.

Q. WHEN DID YOU FIRST TELL MR. ELSTEAD YOU THOUGHT THERE MAY BE A TRO ISSUED?

A. I THINK MAYBE WHEN I DELIVERED THE DOCUMENTS TO HIM.

Q. WHEN WAS THAT? ON FRIDAY?

A. SUNDAY.

Q. ON SUNDAY?

A. YEAH.

Q. SO YOU ASKED HIM TO GIVE YOU A SUBPENA?

A. I JUST TOLD HIM THAT THERE'S A -- THERE MAY BE, ALTHOUGH I'VE NOT SEEN IT, A TRO.

AND HE SAID, "YOU HAVEN'T SEEN IT?"

I SAID, "NO."

Q. HAVE YOU TOLD MR. ELSTEAD IF THE TRO IS IN EFFECT AND PRECLUDES YOU FROM TESTIFYING, YOU DON'T WANT TO BE USED AS AN EXPERT IN THIS CASE?

A. I HAVE NOT CONSIDERED THAT AS AN OPTION AND I DON'T THINK THAT THAT COULD HAPPEN.

Q. WHY IS THAT?

A. BECAUSE I DON'T THINK ANY COURT IS GOING TO HONOR

THAT.

Q. OKAY, I HAVE NEVER SEEN IN MY LEGAL CAREER AN EXPERT WITNESS SUBPENAED IN ANY CASE IN MY LIFE, SO I'M HAVING GREAT DIFFICULTY WITH THIS. IF YOU'RE HERE VOLUNTARILY AS AN EXPERT WITNESS, THEN WE HAVE AN OBLIGATION TO PAY YOU WITNESS FEES AND TREAT YOU LIKE AN EXPERT. IF YOU'RE HERE UNDER SUBPENA, THAT'S A VERY DIFFERENT THING.

A. I'M HERE AS AN EXPERT.

Q. ARE YOU HERE VOLUNTARILY AS AN EXPERT WITNESS?

A. I'M HERE VOLUNTARILY AS AN EXPERT WITNESS. I'VE ALSO BEEN SUBPENAED.

Q. I'D LIKE A COPY OF THE SUBPENA, PLEASE.

A. OKAY, I'LL ASK MR. ELSTEAD.

Q. WELL, LET'S GET IT.

(THE WITNESS LEFT THE ROOM BRIEFLY AND THEN RETURNED)

THE WITNESS: HE DOESN'T HAVE IT RIGHT NOW.

BY MS. REMMERS: Q. DO YOU HAVE IT IN YOUR POSSESSION?

A. I'M NOT SURE.

Q. I MEAN IF YOU WERE GIVEN THE SUBPENA, I IMAGINE YOU WOULD WANT TO HAVE IT, WOULDN'T YOU?

A. I THINK IT MAY BE DOWN IN MY CAR.

Q. WELL, I'D LIKE YOU TO GO GET IT.

A. OKAY.

(7-MINUTE RECESS)

THE WITNESS: WE'RE JUST GOING TO FIVE; OKAY. I HAVE AN APPOINTMENT AFTER THAT.

BY MS. REMMERS: Q. CAN I SEE THE SUBPENA, PLEASE?

A. I DIDN'T BRING IT BACK WITH ME.

Q. WHY IS THAT?

A. IN CONSULTATION WITH MR. ELSTEAD, I'VE DECIDED THAT IT'S NOT RELEVANT TO MY EXPERT TESTIMONY. I WAS NOT REQUIRED BY YOUR NOTICE TO PRODUCE IT. IT'S NOT ANYTHING UPON WHICH I WILL RELY AT TRIAL TO SHOW MY EXPERTISE AND KNOWLEDGE OF THE ORGANIZATION OR ANY OF MY OPINIONS.

Q. OKAY.

A. SO I WILL AT THIS POINT DECLINE TO PRODUCE THE SUBPENA.

Q. OKAY. WHAT ELSE DID YOU TALK ABOUT WITH MR. ELSTEAD? I NOTICED RIGHT AFTER YOU WENT TO YOUR CAR, MR. ELSTEAD FOLLOWED YOU OUT, AND YOU HAD A CONFERENCE BEHIND CLOSED DOORS WITH MR. ELSTEAD. I'D LIKE YOU TO TELL ME EVERY SINGLE WORD THAT MR. ELSTEAD OR THAT HIS CO-COUNSEL HERE SAID TO YOU.

A. IF MR. ELSTEAD FOLLOWED ME OUT, THEN AGAIN IT WAS NOT CONNECTED TO ME.

Q. YOU DID NOT SEE HIM IN THE CAR OR DOWNSTAIRS?

A. NO.

Q. YOU WERE JUST BEHIND CLOSED DOORS WITH HIM.

DID YOU HAVE THE SUBPENA IN YOUR HAND WHEN YOU

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CAME UP TO SEE MR. ELSTEAD?

A. YES.

Q. YOU RETRIEVED IT FROM YOUR CAR?

A. RIGHT.

Q. AND WHAT DID MR. ELSTEAD TELL YOU THAT MADE YOU CONVINCED YOU DO NOT NEED TO PRODUCE IT HERE? FIRST OF ALL, HE HAS TO SERVE THE SUBPENA ON US, TOO. HE HAS TO SHOW US A COPY, TOO.

A. HE PROBABLY WILL. BUT IN GOING OVER IT WITH HIM --

Q. WHAT DID HE SAY?

A. FIRST OF ALL -- I'M ABOUT TO TELL YOU. WITH REGARDS TO THE ARMSTRONG LITIGATION, THAT I HAVE A RIGHT TO PRIVACY IN THAT LITIGATION, AND THAT YOUR QUESTIONS PROBING INTO THE ARMSTRONG LITIGATION ARE IMPROPER.

SECONDLY, WITH REGARDS TO --

Q. HE IS WRONG, SIR. I HAVE A RIGHT TO KNOW ABOUT YOUR BIASES AND PREJUDICE, IF YOU'RE TESTIFYING AS AN EXPERT WITNESS IN THIS CASE . . .

A. THAT'S FINE.

Q. . . . PERIOD, INCLUDING ALL LITIGATION IN WHICH YOU ARE AN ADVERSARY TO THE CHURCH OF SCIENTOLOGY.

WHAT ELSE DID HE TELL YOU?

A. AS I TOLD YOU JUST A MOMENT AGO, IN MY DISCUSSION WITH HIM, AND I ARRIVED AT THAT CONCLUSION AS WELL, THAT I HAVE PRODUCED THOSE DOCUMENTS UPON WHICH I WILL RELY. THOSE

ARE THE THINGS WHICH YOU REQUESTED. YOU DID NOT REQUEST ANY OTHER DOCUMENTS. YOU HAVE A RIGHT TO NOW REQUEST IT. I'M CERTAIN THAT YOU WILL IN DUE COURSE RECEIVE YOUR OWN COPY.

Q. MR. ARMSTRONG --

A. BUT RIGHT NOW I DECLINE TO PRODUCE IT. WE ONLY HAVE 15 MINUTES LEFT IN THE DEPOSITION, AND I WOULD REQUEST THAT WE CARRY ON. AND IF THERE'S ANYTHING SUBSTANTIVE THAT YOU WANTED TO COVER IN THESE 15 MINUTES, I'M QUITE HAPPY TO PROCEED.

Q. MR. ARMSTRONG, I WANT YOU TO TELL ME PRECISELY WHAT MR. ELSTEAD SAID TO YOU, IN HIS EXACT WORDS? IT WAS JUST FIVE MINUTES AGO.

A. I BELIEVE THAT I HAVE SAID AS PRECISELY AS I CAN.

Q. WHAT WORDS DID HE UTTER TO YOU?

A. IF YOU COULD REPEAT BACK MY STATEMENT WITH REGARDS TO --

Q. YOU SAID "IN MY DISCUSSION WITH HIM." YOU DID NOT DESCRIBE WHAT HE SAID TO YOU.

I WANT TO HEAR WHAT HE SAID TO YOU.

A. HE SAID, "YOU'VE GOT A RIGHT TO PRIVACY. SHE CAN'T GO INQUIRING INTO -- YOU DON'T HAVE TO ANSWER QUESTIONS WITH REGARDS TO OTHER LITIGATION."

Q. WHAT ELSE DID HE SAY?

A. I THINK EVERYTHING THAT I'VE TOLD YOU. I CAN'T THINK OF ANY MORE DETAILS.

Q. AND HE TOLD YOU THAT I HAD NO RIGHT TO SEE THE

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SUBPENA THAT YOU WERE GIVEN THIS MORNING, YOU SAID, BY MR. ELSTEAD; CORRECT?

A. RIGHT, THAT THIS WAS NOT WHAT THE DEPOSITION WAS ABOUT, THAT I WAS NOT REQUIRED, AND I COMPLETELY AGREE WITH HIM. THAT'S NOT WHAT THIS DEPOSITION IS ABOUT.

I AM HERE PURSUANT TO AGREEMENT WITH YOU, TO ACT AS AN EXPERT IN THIS CASE, AND I'M PROCEEDING ON THAT BASIS.

Q. AND WOULD YOU HAVE BEEN HERE -- WELL, YOU WERE HERE ABSENT A SUBPENA? YOU SHOWED UP FOR THE DEPOSITION WITHOUT HAVING RECEIVED A SUBPENA?

A. RIGHT.

Q. AND YOU WOULD HAVE COME WHETHER MR. ELSTEAD GAVE YOU A SUBPENA OR NOT?

A. I'M -- THAT DIDN'T ENTER INTO MY EVALUATION OF WHETHER OR NOT TO -- TO SHOW UP. I FELT THAT I HAD COMMITTED TO BEING HERE; SO I WOULD DO WHAT I COULD TO BE HERE.

AND IT WASN'T MY CHOICE. I WANTED TO MAKE IT THE 18TH, BUT I DID WHAT I COULD TO ACCOMMODATE YOU. AND I WORKED, PUT IN A GREAT NUMBER OF HOURS TO ASSEMBLE MY MATERIALS.

Q. OKAY, HOW MANY HOURS HAVE YOU PUT IN SO FAR? YOU HAD TOLD ME HOW MANY HOURS YOU PUT IN UP TO THE LAST DEPOSITION.

HOW MANY HOURS HAVE YOU PUT IN?

A. ASIDE FROM DEPOSITIONS?

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF MARIN

--oOo--

CERTIFIED COPY

CHURCH OF SCIENTOLOGY)
INTERNATIONAL, a California)
not-for-profit religious)
corporation,)
)
Plaintiff,)
)
vs.) No. BC 052395
)
GERALD ARMSTRONG; DOES 1-25,)
inclusive,)
)
Defendants.)
)

DEPOSITION OF

GERALD ARMSTRONG

Volume III

October 7, 1992

REPORTED BY: LARRY BOSTOW, CSR# 5941

MR. GREENE: Go ahead.

MS. BARTILSON: Q. Mr. Armstrong, while working in Mr. Greene's office, have you provided assistance to any other individuals who are engaged in disputes with the Church of Scientology International or any other entity that's covered by the settlement agreement?

MR. GREENE: Same two positions.

MS. BARTILSON: That's at any time since he came to work at your office?

MR. GREENE: That's absolutely right.

MS. BARTILSON: Okay. Exhibit 13.

(Whereupon Plaintiff's Exhibit 13 was marked.)

MS. BARTILSON: Q. The court reporter has handed you, Mr. Armstrong, something that has been marked as Exhibit 13. It's a two-page document. It begins, on page 1, with the words "Where," colon, "Marin Superior Court, San Rafael Civic Center."

And I'll ask you if you've ever seen this document before.

A. Yes.

Q. And is this a press release that was provided to the media concerning your case?

A. Yes.

Q. You know who wrote the press release?

A. Yes.

Q. Who was that?

A. Mr. Greene.

Q. Did you help Mr. Greene in its preparation

A. Broadly, no.

Q. Did you consult with him about its preparation at all?

A. No.

Q. Did he show it to you after he had drafted it?

A. Yes.

Q. Did you make any changes to it after he showed it to you?

A. I have a recollection of making minor typographical changes.

Q. Other than that, you approved it?

A. In that I did not object to it.

Q. Do you know to whom, if anyone, this press release was sent?

A. I presently have no recollection of any of the recipients.

Q. Did you send it out to anyone yourself?

A. I have no recollection of sending it out.

Q. Might have; might not have; you just don't

A. Yes.

Q. Do you recall approximately how many such interviews you've given in 1992?

A. I believe there has only been one interview which I would consider an interview, and that was with CNN.

Q. And were there other times when you spoke to reporters, or other media representatives, that you did not consider an interview?

A. Yes.

Q. Approximately how many of those?

A. I must retract that.

I consider that Bill Horne of the American Lawyer interviewed me.

And then additional contacts of any kind with the media, perhaps ten.

Q. All right. Let's look first at the interview with CNN.

Do you recall the date of that interview

A. My recollection is March 20th, 1992.

Q. Do you recall if it was before or after the hearing held before Judge Dufficy in Marin County Superior Court on the motion for preliminary injunction

A. Yes.

Q. Which was it, before or after?

A. After.

Q. The same day or the next day?

A. Same day.

Q. And where did this interview take place?

A. In Mr. Greene's office.

Q. Do you recall the name of the reporter?

A. Yes.

Q. And who was that?

A. Don Knapp, N-a-p-p (sic).

MR. GREENE: K-n --

THE WITNESS: K-n-a-p-p.

Thank you.

MS. BARTILSON: Q. And for approximately how long were you interviewed by Mr. Knapp?

A. Perhaps five minutes. Less.

Q. And was your lawyer also interviewed by Mr. Knapp?

A. Yes.

Q. Do you recall any of the substance of what you communicated to Mr. Knapp during the interview?

A. Yes.

Q. What was that?

A. It related to Scientology's practice of fair game and my knowledge of organizational and Hubbardian fraud.

Q. Knowledge which you had gained because of your years of experience with the organization, as you term it?

A. Correct.

Q. Was the interview videotaped?

A. Yes.

Q. Was the entirety of the interview videotaped, or were there times that you also spoke with Mr. Knapp that were not videotaped?

A. If, by that, you mean when, for example, I may have helped him out with his camera gear, opened the door for him and said "Good-by," or helped him move things around and exchanged comments of that nature, then, no. I think that's how to answer it.

MS. BARTILSON: Could you read back the question and the answer, because I'm not sure --

MR. GREENE: He said that there was no substance aside from courtesies that -- there was nothing -- nothing was videotaped except --

Go ahead. Read it back.

MS. BARTILSON: I'm not sure that was the answer to the question. I just want to see what we've got.

Okay.

(Whereupon the record was read.)

was aired by CNN.

MS. BARTILSON: Q. So you asked Mr. Knapp how you could go about doing that?

A. That's the gist of the conversation.

Q. Do you recall his reply?

A. Not specifically.

Q. Did you discuss anything else with Mr. Knapp besides the obtaining of the videotape of that segment?

A. It may have been that we discussed running briefly.

Q. Did you ever have any other occasion to speak with Mr. Knapp besides the two that you've now described?

A. No.

Q. Do you know who arranged for Mr. Knapp to come to Mr. Greene's office on March 20th?

A. No.

Q. Were you working in Mr. Greene's office on March 20th, 1992?

A. Yes.

Q. When were you interviewed by Bill Horne?

A. I believe in the spring, this year.

Q. Do you recall what month?

A. Not right now.

Q. Do you recall if it was before or after the

CNN interview that you've described?

A. It was after.

Q. Do you recall if it was before or after the first time you came down to Los Angeles for a hearing in this case, after it had been transferred to Los Angeles?

A. I believe it was before.

Q. Okay. How did you come to have an interview with Mr. Horne?

A. I think that it stems from my involvement in Scientology litigation, which subject he was covering in his story.

Q. Did he contact you, or did you contact him?

A. I believe he contacted me.

Q. By telephone or in person or in writing?

A. I believe by telephone.

Q. Do you recall approximately how long before your interview with Mr. Horne he contacted you by telephone?

A. It might have been as long as a couple of weeks.

Q. And your interview was in person, was it not?

A. Yes.

Q. As best you can recall, when Mr. Horne contacted you by telephone that first time, what did he say to you and what did you say to him?

A. I have no recollection.

Q. Did you have any subsequent telephone calls with Mr. Horne before you were interviewed by him in person?

A. I believe so.

Q. Do you recall how many?

A. Perhaps two.

Q. Can you distinguish between the two conversations in your mind, or do they blur together when you think about them?

A. I distinguish them by his proximity: As he approached, he made a call.

Q. As he approached San Anselmo from some other part of the country?

A. Correct.

Q. Do you recall what was said in the first conversation?

A. No.

Q. Do you recall anything that was said by either of you in the second conversation?

A. It related to logistics, when was he arriving.

Q. Approximately how much time did you spend with him after he had arrived?

A. I believe I spent, myself, perhaps an hour and a half with him.

Q. Do you know anyone else who spent time with him?

A. Mr. Greene spent some time with him.

Q. Do you recall how much time?

A. No.

Q. Was Mr. Greene present when you were interviewed by him?

A. Some of the time.

Q. Were you present when Mr. Greene was interviewed by him?

A. Some of the time.

Q. Where did your interview take place?

A. In the office and walking into San Anselmo, having lunch, and returning.

Q. Mr. Horne arrived at your office on the day of the interview, which date you don't recall; is that right?

A. I'm sorry. I didn't get that.

Q. Did Mr. Horne arrive on his own at your office?

A. Yes.

Q. Was he by himself?

A. Yes.

Q. Did he tape-record the interview?

A. No.

Q. Did he take notes?

A. At times.

Q. Do you remember the subjects that you discussed with Mr. Horne?

A. Broadly, yes.

Q. Did you tape the interview with Mr. Horne?

A. No.

Q. Did Mr. Greene?

A. I don't know.

MR. GREENE: God may have.

MS. BARTILSON: God records everything, Ford. Best court reporter of all.

Q. What subjects do you recall discussing with Mr. Horne, speaking of broad subjects now?

A. The effect of the settlement agreements, the plight of the organization, what it would take to end its legal troubles.

Q. Anything else?

A. That's, basically, it.

Q. When you say "the effect of the settlement agreements," you are talking about agreements other than just yours?

A. Mine and others of that ilk, so both on a personal and theoretical and real level.

Q. And you are talking here about other settlement agreements that included nondisclosure agreements; is that right?

A. What was your question again?

Q. When you say "others of that ilk," you are discussing other settlement agreements that included nondisclosure provisions; is that correct?

A. Specific to the organization, yes.

Q. Did you discuss your own litigation with CSI with Mr. Horne?

A. I believe it was discussed in some form, the specifics about which I do not know.

Q. You don't know, or you don't recall?

A. I fail to see a difference in that sentence or context.

Q. Well, if you don't know something was discussed, you could not know it by never having been there or it never having come up.

A. But you know that I was there, and I said it had come up. So we've eliminated those two from the definition, at least, the distinction between "know" and "recall" in that sentence.

In any case, if it would speed things: I do not recall.

Q. Did you discuss with Mr. Horne any of your experiences that you had had with any Church of Scientology or with Mr. Hubbard prior to 1986?

A. I only met him in 1992.

Q. Right.

Did you discuss with him any experiences you had had with the Church of Scientology or Mr. Hubbard, and dating those experiences back to before 1986?

A. I have no recollection of any specific experience being discussed.

Q. Might have; might not have; you just don't recall?

MR. GREENE: Objection.

You can answer the question.

THE WITNESS: Yes.

MS. BARTILSON: Q. But you discussed the settlement agreements with him; is that right?

A. That is one of the things which I recall at this time.

Q. Did you give him a copy of your settlement agreement?

A. I don't believe so.

Q. Did you give him any documents?

A. I may have.

Q. Do you recall, as you sit here today, any

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documents that you know you gave to him?

A. No.

Q. Did your lawyer give him any documents?

A. I don't know.

Q. If you had given Mr. Horne any documents, is there anywhere you might have made note of that or kept a record of it in some way?

A. There could be.

Q. Where would that be?

A. I don't know.

Q. You might have made such a note, but you don't know where that note would be?

MR. GREENE: Okay. Enough. Speculation.

Don't answer any more of these "if you"-type questions.

MS. BARTILSON: Well, I'm trying to find out if there's anything in existence that could refresh the witness's recollection, and I think I'm entitled to that.

MR. GREENE: Then ask him. No more speculative questions.

Don't answer the "if," speculative, questions.

MS. BARTILSON: Q. When you gave documents to reporters or other members of the media, Mr. Armstrong, has it been your custom and practice to make

But as to the specific discussion of it as a workable philosophy, I don't believe so.

Q. Do you recall anything else that you discussed with Mr. Welkos during that conversation besides what you've already testified to?

A. Perhaps the transfer of the case to Los Angeles.

You won that transfer motion. You shouldn't complain.

MR. GREENE: Yeah, shooting gun.

MS. BARTILSON: I figure we're 1 for 1 on the transfer motions.

MR. GREENE: Yeah, tit for tat. But we'll see how the tat --

MS. BARTILSON: Q. Anything else, that you recall?

A. Not that I recall.

Q. When was the next time you spoke to Mr. Welkos or Mr. Sappell?

A. Around the time of the Sohigian ruling.

Q. This is another telephone conversation?

A. In that I have only met Mr. Welkos on that one occasion, yes.

Q. I apologize. You said that, and I forgot.

And this was a conversation with Mr. Welkos?

A. Yes.

Q. Did you call him, or did he call you?

A. I believe I originated the conversation.

Q. What did he say to you, and what did you say to him, during that conversation?

A. I believe I advised him of the Sohigian ruling.

Q. Did you discuss anything else with him?

A. I think it was -- That's all that I recall being the subject of discussion at that time.

Q. Did you tell him that as a result of the Sohigian ruling, you now felt that you were more free to do things that you had been constrained about doing before?

A. No, I never said that. Because I did not feel I was constrained before. But rather that by specifically denying the injunction as to all of those things which the organization sought in the preliminary injunction, that I was free from the potential of an injunction.

Q. Okay. Did you have another conversation with Mr. Welkos or Mr. Sappell after that one?

A. Yes.

Q. When was that?

A. Perhaps two months ago.

change if you did. I believe it's covered by some already outstanding document requests.

Q. Any other conversations that you had with Mr. Lobsinger besides the ones that we've discussed?

A. No.

Q. When in 1992 did you speak to Richard Behar?

A. Sometime in the spring.

Q. Do you recall if it was before or after the hearing in front of Judge Dufficy?

A. I believe it was after.

Q. Do you recall if it was before or after your first appearance in Los Angeles after this case had been transferred to Los Angeles?

A. It may have been.

Q. It may have been before?

A. Before or after.

Q. Okay. Was this the only occasion on which you spoke to Mr. Behar in 1992, or was there more than one?

A. There may have been two, but I have no recollection of if or when.

Q. Was it by telephone?

A. Yes.

Q. Did you call him, or did he call you?

A. I believe I called him.

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Q. Do you recall the reason for your telephone call to Mr. Behar?

A. I think it had to do with the organization's suing either Time or Reader's Digest for the reprint of the Time article.

Q. So someone suing Time or Reader's Digest was your reason for your calling Mr. Behar?

A. Someone?

Q. Right.

A. No.

Q. Then I misunderstood.

A. The organization's suit.

Q. Okay.

A. Right.

Q. Are you a party to that suit?

A. I'm sorry?

Q. Are you a party to that suit?

A. No.

Q. To the best of your recollection, during that conversation, what did you say to him, and what did he say to you?

MR. GREENE: At this point, Mr. Armstrong, I'm going to instruct you not to answer that question based on the attorney-client, work-product, and joint-defense privileges.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF MARIN

--oOo--

CERTIFIED COPY

CHURCH OF SCIENTOLOGY
INTERNATIONAL, a California
not-for-profit religious
corporation,

Plaintiff,

vs.

No. BC 052395

Gerald Armstrong; Does 1-25,
inclusive,

Defendants.

DEPOSITION OF

GERALD ARMSTRONG

Thursday, October 8, 1992

VOLUME IV

REPORTED BY: BARBARA H. STOCKFORD, CSR No. 4575

MR. GREENE: So as to that one, I instruct you not to answer.

MS. BARTILSON: Just so I'm clear, the basis for your instruction is that --

MR. GREENE: Work product.

MS. BARTILSON: -- is that Mr. Armstrong was acting as your paralegal in his own case?

MR. GREENE: In his case, got it.

MS. BARTILSON: Q. Did you, at any time since July 22nd, 1992, discuss, however briefly, with either of the Aznarans any matters concerning their own case?

A. Broadly, yes.

Q. What did you discuss?

MR. GREENE: Let me take a break here.

(Sotto voce conversation between the witness and Mr. Greene.)

MR. GREENE: Go ahead.

MS. BARTILSON: Q. After discussing it with your attorney, Mr. Armstrong, what's the answer to your question?

A. The extent of those matters was the relaying of a communication from Mr. Greene or back and forth.

MS. BARTILSON: Q. You were relaying a communication from Mr. Greene to the Aznarans?

A. It may have been that.

Q. May have been?

A. With the understanding that it could take the form as simple as, "Is your fax machine on?"

Q. Did you fax things to the Aznarans?

MR. GREENE: Mr. Armstrong, I'm going to instruct you not to answer that question based on attorney-work product privilege.

MS. BARTILSON: Q. Did you assemble documents for the purpose of faxing to the Aznarans?

MR. GREENE: Same instruction.

MS. BARTILSON: Q. Did you receive faxes from the Aznarnans?

MR. GREENE: Same instruction.

MS. BARTILSON: This is for the work product privilege concerning Mr. Armstrong's case?

MR. GREENE: No. Concerning the Aznarans' case.

MS. BARTILSON: Concerning the Aznarans' case.

MR. GREENE: And based on general privacy concerns of my office --

MS. BARTILSON: Privacy concerns of your office. You won't let him tell me whether or not he faxed anything to the Aznarans?

MR. GREENE: That's right.

MS. BARTILSON: Q. Mr. Armstrong, has Mr. Greene ever instructed you not to work on the Aznaran file?

MR. GREENE: I'm going to object, and that objection is asserted on behalf of Mr. Armstrong based on the attorney-client privilege.

Do not answer that question.

MS. BARTILSON: Q. Mr. Armstrong, in your capacity as Mr. Greene's paralegal, has Mr. Greene ever instructed you not to work on or not to look at any of the filings in his office?

MR. GREENE: Same instruction. And I'll also add to that instruction or add to the basis work product on behalf of the Aznarans and privacy with respect to my office generally.

Also, with respect to all of those prior objections, I'll add an additional basis which is the Sixth Amendment right to counsel.

MS. BARTILSON: Are you sure you don't want to add the Fifth Amendment, too, Ford?

MR. GREENE: We'll see about that.

MS. BARTILSON: Okay. You're the lawyer.

Q. Mr. Armstrong, other than relaying communication from Mr. Greene, whether by fax or verbally, to the Aznarans concerning their case, have you had any other communications with the Aznarans concerning their case?

MR. GREENE: That misstates his prior testimony.

Don't answer that question.

MS. BARTILSON: Hard to answer if I can't finish it. Why don't you let me finish the question and raise the objection so we have a complete record?

MR. GREENE: I thought you said "did you have any communications on any other cases." I thought you were finished. Sounded like the end of a question to me.

MS. BARTILSON: No.

Can you read back what I had so far?

(Record read.)

MS. BARTILSON: By George. I take it back. I finished the thought. I didn't even know it.

So he's not going to answer?

MR. GREENE: That is correct.

MS. BARTILSON: Okay.

Q. Mr. Armstrong, do you know Tilly Good?

A. Yes. In the sense -- when you say "know," I know of her existence, yes.

Q. Have you ever spoken with Ms. Good?

A. Yes.

Q. On how many occasions?

A. Perhaps four.

Q. Have you ever met Ms. Good?

A. No.

Q. Have you ever worked on a her case file?

MR. GREENE: Objection. Attorney-client work product privilege.

All of the prior objections which would be work product, privacy, interference with right to counsel and attorney-client.

MS. BARTILSON: These are asserted on behalf of Ms. Good?

MR. GREENE: That's correct.

Well, no. Attorney-client and work product are asserted on behalf of Ms. Good. And privacy is asserted on behalf of my office generally. And Sixth Amendment is asserted on behalf of Ms. Good.

MS. BARTILSON: Q. When is the first time you remember speaking with Ms. Good, Mr. Armstrong?

A. Some months ago.

Q. In 1992?

A. I believe so.

Q. Was it before April 1992?

A. I don't recall.

Q. When is the last time you recall speaking with Ms. Good?

A. Perhaps a month ago.

Q. Have you provided Mr. Greene with any assistance in working on Ms. Good's case?

A. I'm going to instruct you not to answer that based on ambiguity and vagueness.

MS. BARTILSON: Ambiguity and vagueness?

MR. GREENE: Right.

MS. BARTILSON: Q. Is Mr. Greene Ms. Good's attorney?

A. Yes.

Q. Does Ms. Good have a dispute with one or more Churches of Scientology?

MR. GREENE: And with respect to that, Mr. Armstrong, I will instruct you not to answer the question based on attorney-work product privilege.

MS. BARTILSON: Q. Mr. Armstrong, do you have personal knowledge whether or not Ms. Good has a dispute with any Church of Scientology?

MR. GREENE: Again, same instructions to Mr. Armstrong.

Don't answer the question.

MS. BARTILSON: Q. Or if she had one?

MR. GREENE: Same instruction.

MS. BARTILSON: I find this a little curious, Mr. Greene, since you have been bombarding my office with letters concerning Ms. Good's dispute. I can hardly see how you claim that's privileged information.

Q. Mr. Armstrong, do you know Denise Cantin?

A. Yes.

Q. Had you ever met Ms. Cantin -- Dr. Cantin?

A. Yes.

Q. Where did you meet her?

A. At the Hub law office.

Q. On how many occasions have you met Dr. Cantin?

A. One.

Q. When was that?

A. I would say approximately --

MR. GREENE: Wait, wait, wait.

Actually, Mr. Armstrong, I'm going to instruct you not to answer that question, and I'm going to -- that instruction is based on the attorney-client privilege between myself and Dr. Cantin, as well as work product privilege, because I do not want Scientology knowing anything about the frequency or anything else that I meet with my clients.

So don't answer the question.

And I also would add two other objections, which is the right to privacy and the interference with the right to counsel.

MS. BARTILSON: Don't hire Jerry Armstrong to be your paralegal when he's not supposed to do what he's doing. Real simple solution.

Not only that, he already testified she was at your office once, so you can at least let him tell me when he's not giving up anything.

Q. Have you spoken with Dr. Cantin on the telephone?

A. Yes.

Q. Have you discussed with Dr. Cantin her dispute with any Churches of Scientology?

MR. GREENE: And there, the same objections apply. The same instruction.

MS. BARTILSON: Even though I'm not asking for substance?

MR. GREENE: That's correct.

MS. BARTILSON: Okay.

Q. Do you know Ed Roberts?

A. Yes.

Q. Have you met Mr. Roberts?

A. Yes.

Q. Where did you meet Mr. Roberts?

A. In Boulder Creek.

Q. When was that?

MR. GREENE: And with respect to that, Mr. Armstrong, I'll give you the same instruction. And the -- for the same reasons as applied to Roberts.

MS. BARTILSON: Q. When you met Mr. Roberts in Boulder Creek, was it in connection with your employment as a paralegal for Mr. Greene's office?

A. Yes.

Q. Did you interview Mr. Roberts?

A. Yes.

Q. Did you take notes of your interview with Mr. Roberts?

A. No.

Q. At the time you interviewed Mr. Roberts, had he engaged Mr. Greene to represent him?

A. Yes.

Q. Was Mr. Greene engaged to represent him in his disputes with the Church of Scientology or related entities?

A. Yes.

Q. And did you interview him concerning that dispute?

A. Yes.

Q. I'll ask you again when that was.

MR. GREENE: You can answer.

THE WITNESS: In approximately November 1991.

MS. BARTILSON: Q. Have you spoken with Mr. Roberts since the time you interviewed him in November of 1991?

A. Yes.

Q. How many times?

A. Perhaps seven.

Q. Have you discussed with him on any of those seven occasions his dispute with one or more Churches of Scientology?

MR. GREENE: I'm going to draw the line there and instruct you not to answer for the same reasons previously stated.

MS. BARTILSON: Q. When was the last time you spoke with Mr. Roberts?

A. Perhaps two months ago.

Q. Since November of 1991, have you helped Mr. Greene prepare any documents in connection with the Roberts case?

MR. GREENE: As to that, I will draw the line and instruct you not to answer the question based on the reasons previously stated.

MS. BARTILSON: Q. Since November of 1991, have you had any discussions with Mr. Greene concerning the substance of Mr. Roberts' claims against any of the Churches of Scientology or related entities?

MR. GREENE: Same instruction; same reasons.

MS. BARTILSON: Q. Since November of 1991, have you had any discussions with Mr. Roberts or have you been present in any discussions between Mr. Roberts and others concerning his claims against Church of Scientology or any related entities?

MR. GREENE: Same instruction; same reasons.

MS. BARTILSON: Q. I'd like to ask those same questions concerning both Ms. Good and Dr. Cantin, and I assume they will be the same.

MR. GREENE: I will stipulate as to the same questions with the same two positions in response as to Tilly H. Good and Denise Cantin.

MS. BARTILSON: Good enough.

Q. Now, at some point after the settlement agreement was signed in December of '86, you received a payment from Michael Glynn of the money that you were due pursuant to the settlement agreement; is that correct?

MR. GREENE: That's been asked and answered.

MS. BARTILSON: I know; this is just

WHERE: Marin Superior Court, San Rafael Civic Center -
Scientology vs. Armstrong No. 152229

March 20, 1992 at 9:00 a.m., Department 4.

* * * * * *

Can the Scientology Organization purchase the free speech rights of Gerald Armstrong - the former in-house biography researcher/archivist of cult leader L. Ron Hubbard - so that it can keep the facts that he knows out of public view in the marketplace of ideas?

A former high-ranking Scientologist for 12 years, Armstrong split with the group when it insisted he continue lying about the accomplishments Hubbard claimed to the public at large. In 1982, the organization sued Armstrong for sending Hubbard documents to his lawyers. In 1984 at Armstrong's trial, Los Angeles Superior Court judge Paul G. Breckenridge, Jr., who ruled that Armstrong's actions had been manifestly justified, also found:

> "In addition to violating and abusing its own members civil rights, the organization over the years with its "Fair Game" doctrine has harassed and abused those persons not in the Church whom it perceives as enemies. The organization is clearly schizophrenic and paranoid, and this bizarre combination seems to be a reflection of its founder LRH [L. Ron Hubbard]. The evidence portrays a man who has been virtually a pathological liar when it comes to his history, background, and achievements. The writings and documents in evidence additionally reflect his egoism, greed, avarice, lust for power, and vindictiveness and aggressiveness against persons perceived by him to be disloyal or hostile."

For years, Scientology has treated Armstrong as a "suppressive person" who was "Fair Game." This policy says as Fair Game one

> "may be deprived of property or injured by any means by any Scientologist without any discipline of the Scientologist. May be tricked, sued or lied to or destroyed."

Defended by Ford Greene - the lawyer who persuaded the California Supreme Court that the Unification Church (Moonies) should be liable for brainwashing and who won an acquittal for a felonious-charged deprogrammer on the ground that the kidnapping was necessary to avoid cult-danger - Armstrong is resisting Scientology's high-powered attack in an effort to affirm his right to free speech to maintain vigilance for the truth.

After Armstrong beat Scientology's lawsuit against him in 1984, he was poised to prosecute his own claims. For millions of dollars, however, in 1986 Scientology settled with him and over 17 other Scientology-knowledgeable individuals on the condition that those persons would forever keep silent, avoid giving sworn testimony by evading subpoenas, and never aid or assist any one adverse to Scientology.

Between its full-page daily ads in U.S.A. Today and purchasing the silence of judicially-credible adversaries, Scientology's strategy is to eliminate the competition in the marketplace of ideas for those who would swallow the claims of its widespread advertisements for the benefits of Dianetics: The Science of Metal Health.

Scientology has demanded that newly-elevated Marin County Superior Court judge Michael Dufficy give them a preliminary injunction which would prevent Armstrong from speaking out and assisting other individuals locked in litigation with Scientology - while at the same time fabricating false scenarios in other court proceedings that Armstrong was an agent of the IRS out to destroy it. If Scientology has its way, Armstrong would either roll over, or if he exposed its lies about him, Scientology would demand he be jailed for contempt of court.

When Scientology first came to Marin County to go after Armstrong, it asked the Court to conduct all proceedings in secret in closed proceedings. The Court refused. Then Scientology asked the Court to seal the settlement agreement that Scientology wants the Court to enforce. The Court refused. Now, Scientology has obtained a temporary restraining order compelling Armstrong not to speak out on the subject of Scientology. Scientology would like to make it permanent and will attempt to do just that at the March 20th Marin Superior Court hearing.

FOR FURTHER INFORMATION CALL: KIRK SEIDEL, Press Liaison
(415) 457-5711

FORD GREENE (415) 258-0360

IN AND FOR THE SUPERIOR COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

--oOo--

CERTIFIED
COPY

CHURCH OF SCIENTOLOGY
INTERNATIONAL, a California
not-for-profit religious
corporation,
Plaintiff,

vs.

Case No. BC 052395

GERALD ARMSTRONG; DOES 1
through 25, inclusive,

Defendants.

DEPOSITION OF

GERALD ARMSTRONG

Wednesday, June 24, 1992

REPORTED BY: SUSAN M. SKIGEN, CSR #5829

since, since '89.

Q. Okay.

A. When, I mean, I have, I have absolutely no intention of honoring that settlement agreement. I cannot. I cannot logically. I cannot ethically. I cannot morally. I cannot psychically. I cannot philosophically. I cannot spiritually. I cannot in any way. And it is firmly my intention to not honor it.

Q. No matter what a court says?

A. No court could order it. They're going to have to kill me.

Q. Well, let's just hope we don't have to turn this into a death penalty case.

A. Into a what?

Q. A death penalty case.

A. Right, but you guys would.

Q. I'm not the one who stands up and pounds the table and screams at people in this deposition, your lawyer is. If I were to stand up at this deposition and scream at you to shut up, would you consider that to be an act of fair game?

A. I consider the whole thing --

Q. I know, but if I were to stand up and yell at to you shut up, would you consider that to be fair game?

December 22, 1992

David Miscavige and all other individuals who participate in the control of Scientology
C/O Laurie J. Bartilson, Esquire
Bowles & Moxon
6255 Sunset Blvd., Suite 2000
Los Angeles, CA 90028

Re: Nothling v. Scientology

Dear David and all others involved:

I am writing this to you, and the various copy recipients listed below, because there are certain things it is fair that you know. Although it is the trial in the Nothling case, which, I understand, is set for early February, that has moved me to write at this time, the idea of writing has made addressing a number of other subjects also timely.

You will recall that in June of 1991 when Malcolm Nothling called me and asked me to testify in his case in Johannesburg I wrote to the organization via Eric Lieberman to see if by initiating communication on the subject you might see that there was an answer to your litigation problems different from the one you and your erstwhile leader had been believing in and pursuing as long as any of us can remember.

Mr. Lieberman wrote back, essentially advising me you said stick it in my ear, and that more, not less litigation was going to be the same old solution; and to not expect communication other than the solidest of sorts. Copies of Mr. Lieberman's and my letters are enclosed herewith.

I did travel to South Africa in 1991 to testify, as you know, but the trial was postponed on the organization's motion. Now it's set to happen again. Again Mr. Nothling has asked me to testify, again I have agreed, and again I am writing you to see if there is any sense in attempting to unfoment this litigation.

Your public attack line that Gerald Armstrong foments litigation against you is particularly hurtful because of what I have done and continue to do to unfoment litigation. Even my signing of your settlement agreement was, in the face of your intent to hurt me, which fact is settled by the agreement itself, an act only of unfomentation.

You all should take a good hard look at the hurt your practices, certainly your litigation practices, cause in the world. And you don't have to desist in them because of anything I've said. You can knock off those bad practices for any reason you want, including because they don't work and make no sense.

All the decent people, believe me, in your organization want you to get out of the stupid attack-the-attacker business, and they'd salute you for getting the organization out of that silliness, but they're too frightened. You shouldn't frighten good people that way. It's cruel. And any thinking soul knows that you guys are only acting out of fear, so you really are not fooling anyone with your blindness and bluster.

I realize you've put your faith in really bad things, like lies and PR, threats and bullying, and really mean people, like Gene Ingram. And I'm aware that having put your faith in badness for so long, and spent so many millions of dollars to have so many bad lawyers make so many bad decisions and add so much to their brethren's bad name, it can seem impossible to quit. But you must. All it will take is the willingness to unfoment your litigation.

Eugene M. Ingram has done such nasty things to so many people in the service of your organization, you and he should be spanked. His terrible charge at the CAN convention that I have AIDS is heartbreaking, not because I have AIDS, which I don't, but because your pet pit viper personalizes and focuses your organization's institutionalized hatred.

By accusing me of having AIDS, you and Ingram attack not just me, you attack the many people whose lives have been touched by this disease, or for that matter touched by your organization, and you attack yourself. Your similar-veined attacks on other people of good will at the CAN conference, like Father Kent Burtner, has brought your organization to ignomy.

But the target of faith can be rechosen. And that is where I urge sense and unfomentation. Put your faith in what is real, what is true, what can always be depended on. Put your faith in what in people is true, unchanging and ceaselessly loving. Putting your faith in lies, PR, threats, bullying and bullies you will always betray yourself because you put your faith in nothing; and you and every being everywhere have a right to everything that nothing isn't.

Likewise don't put your faith in litigation or your use of the courts to harass. It is possible to be faithful to a higher ideal than wins in court. If you have put your faith in lies, leverage, advantage and bullying to secure a win, you have gained nothing. If you put your faith in truth, hope, charity, love, no matter the courtroom outcome you have everything; that's religion.

Since the 1991 almost trial in the Nothling case the California Court of Appeal issued its opinion in the appeal you took from the Breckenridge decision in Armstrong I, the California Supreme Court denied review, and the Court of Appeal denied your motion to seal the appellate record. You brought and lost the motion to enforce the settlement agreement before Judge Geernaert in Armstrong I, and then you sued me to enforce it in Armstrong II.

In May Judge Sohigian issued his ruling refusing to enforce the agreement, although enjoining me from testifying unless pursuant to a subpoena. He also ruled that I did not have to not make myself amenable to service of process. I will supply a copy of the Breckenridge decision, the Armstrong opinion and the Sohigian injunction to any of the recipients of this letter upon request.

Because you didn't appeal from the Sohigian injunction, you have accepted it. I believe as well that for a valueless desire for a valueless win at any cost you also accepted his dicta; e.g. "involves abusing people who are weak," "involves techniques of coercion," "a very, very substantial deviation between [your] conduct and standards of ordinary, courteous conduct and standards of ordinary, honest behavior," "be sure you cut the deck," "make sure to count all the chips."

As a result, I consider myself free to do anything anyone can, except testify absent a subpoena. Much of what I am permitted do I am going to do. I am going to write freely, speak freely, publish, talk to the media, associate freely, and continue, until you put your faith in something more religious than what is bad in jurisprudence, to confront the injustice you bring to court.

In the next month or so I expect to initiate speaking or media events to help pay the enormous costs of this litigation. And I expect to promote my legal position within the publishing industry, because my story and my writings on the subject are literarily and commercially worthy.

I will continue to associate with and befriend all those people I consider you attack unjustly and senselessly. I will make my knowledge and support available to the Cult Awareness Network, a group of people of good will you vilify, in all the litigation you have fomented against them. I will make my knowledge and support available to any Scientologist who is afraid to go anywhere else for understanding, and to the families of Scientologists your organization has estranged. I will even make my knowledge and support available to entities like Time and people like Rich Behar in their defenses from your attacks.

I will, nevertheless, remain available to do whatever I can to unfoment your litigation. I will meet with you, talk with you, help you to find a better solution to your problems. Because of your decision to not have anyone communicate with me, no one from your organization has. I get a little lawyer contact, lots of PI BS, an OSA hearing or deposition attender, enough psychic skirmishes for an army, but, for the life of me, no real people.

In 1991, fantastically, I was the only person in the world, other than Malcolm Nothling himself, who was willing to testify at his trial. And that was enough reason to go. In February 1993, although at this trial I probably won't be the only person willing to testify, there will still be ample reasons to go, unless the case can be resolved.

I really would rather there was no trial and I really would rather not go. Lord knows this last period has been overwhelming and the litigation behemoth terrifying; and Lord knows I have my own calling, which has nothing to do with your legal problems. So I'm willing to do a lot to unfoment the Nothling litigation, and all the tangled legal webs you've woven. But I sure can't do much if you continue to see legal warfare as the solution to your problems and continue to pay the millions your legal mercenaries say the warfare costs.

I am aware that with enough money to enough lawyers you, the leaders of your organization, can hide yourselves and make your roles in your trumped-up war seem very important. There is no doubt this is desirable, it just isn't fair. The real purpose of your little war is to facilitate your doing something different from Scientology, while all those whom you control must go through the daily grind you say you're above.

I don't fault you for doing something different from Scientology, but I do not find acceptable your holding Scientologists in bondage to your catastrophic cause, enforcing your lie that you have their best interests in mind, robbing their years of youth and vigor, and putting them at risk while you show up at the occasional ribbon cutting ceremony, lunch with lawyers and the like, sucker celebs, run PIs and intel ops, conspire, cheat, lie, steal, bully and destroy. I urge something more creative as a better idea.

Your hardworking staff members and people of good will around the world who have supported you financially and spiritually will not for much longer be fooled by your foolishness and will stop believing your lies. They will speak to each other, they will speak out against your suppression, and they will act to free themselves and their friends. You cannot much longer, as we move societally into the age of wisdom, cynically and sillily intimidate good people with threat and suppress good people with lies.

There is the matter of mitigation of damages which, because you insist your lawyers tell you what you pay them to say, you may not have heard or yet understood. In that by the Sohigian ruling I am permitted to speak freely, write freely, publish freely, associate freely, when, it could be argued, and you have, that prior to the ruling and pursuant to the settlement agreement I was not so permitted, I have, in your attempt to enforce the agreement, prevailed.

By not appealing the Sohigian ruling you have acquiesced thereto. I am therefore due costs and fees in Armstrong II plus the costs and fees you already owe in your earlier losing and unappealed effort in Armstrong I. But in addition to the fees and costs now owing, and increasing as you protract this already lost litigation, there is the cumulative effect of your legal onslaught which, continuing after the case was lost, if not before, is in every minute malicious.

Gerald Armstrong and The Gerald Armstrong Corporation (TGAC) must also mitigate their damages. I have a duty, therefore, to end this litigation as quickly as possible. Thus I write to so many organizational recipients; thus I canvass to see if within the organization's many parts, all put at risk by their leaders' asininity and mean-spiritedness, there are people of good will who will see sense in what is in their best interest.

That after the Sohigian ruling you sued TGAC (pronounce that Tee-Gee-Ack) is silly and self-destructive. The only thing in the world Gerald Armstrong, individual, is prohibited from doing by the "injunction," is testifying about his Scientology history and knowledge without first accepting the perfunctory subpoena. TGAC only came into existence in 1987, six years after Gerald Armstrong's organization experiences ended, and a year after the Armstrong I litigation "settled."

TGAC cannot testify, with or without subpoena, about any Scientology experiences, because it has had, aside from those which have flowed from your lawsuit, none. Since no one, including TGAC, is prohibited by Sohigian from doing any of the things TGAC actually is capable of doing, it is free to do everything anyone or any other corporation can; and by not appealing the injunction you have so agreed. Thus, having no conceivably legitimate claim against TGAC, you depend on one manufactured from madness, and you must therefore dismiss the mess you've made.

There is also, as mentioned above, the fact that in order to defend myself from your attacks and to fund the defense of the litigation you have fomented I must speak and must publish. I'm sure you understand that I remain completely confident that no court, other than the odd one your mercenaries are able to compromise with bucks, babes or bull, will order me to not defend myself.

I realize you will probably claim to be offended by everything I've written in this letter. I can't do much about that because you seem to take offense no matter what I say or write, or don't. For, *inter alia*, that reason I haven't said or written it differently. I really don't blame you for being offended and I don't expect you not to be offended; nor will I be offended if you are. I think my position is obvious and I think peace is worth doing something about, even if the fomenters of war are offended. I've used the words I've used because to me they make sense and they're a facet of my craft.

This letter is not really, however you may take it, a complaint nor an attack. It is an effort to unfoment your litigation, into which I have been, albeit for some God-given purpose, drawn. So, neither forgetting nor ignoring Judge Sohigian's admonition not to settle Armstrong II, but still hoping, with my heart crossed, here is my proposal:

1. Settle the Nothling case;
2. Settle with Ed Roberts;
3. Dismiss your complaint against TGAC and Gerald Armstrong;
4. Remove all your bar complaints against Ford Greene;
5. Pay my attorney fees and costs;
6. We will dismiss the cross-complaint and appeal;
7. Cancel the agreement;
8. Return all materials you've stolen from me at any time;
9. Pay me whatever you want, including, but not limited to, nothing.

1. Malcolm Nothling has a claim and he has survived a lot to get to trial. His costs, not much by US litigation standards, must be recognized, and he must be made whole financially, ethically and publicly. I am convinced that his daughter, but for your control of her mother and her life, would enjoy a healthy, loving relationship with her father. Therefore you must do whatever is within your power to reunite them.

2. You know about the Ed Roberts case because Ms. Bartilson interrogated me about my providing assistance to Mr. Roberts in my last series of depositions in Armstrong II, and one of your lawyers, Marcello Di Mauro, in earlier times communicated about him with Ford Greene. Ed Roberts is a friend of mine who

was sucked dry and flat out robbed by your registrars on the way to an up- or downstat week of no consequence to anyone as it turns out, and always does, but Ed.

I have found myself in the silly position of being the only person in the world willing to help Mr. Roberts against your organization. Again, I have no desire to have Mr. Roberts engage you in litigation. In fact his situation can be resolved without your fomenting not only more litigation, but more ill will and silliness. For you it is merely an accounting matter. You ripped Mr. Roberts off; now pay him what is needed to make him whole again.

Mr. Roberts' case of Scientology lies, threats, treachery and thievery, his own money then used to pay your pittiless pettifoggers to prevent him from anything resembling redress, is being played and replayed every day of the year in your orgs. I would think that the three or so million you wasted on your inane USA Today ads to counter Richard Behar's few good pages could have taken care of three hundred Mr. Roberts and done a heap of good.

All your ads did was a heap of bad: more lies, more hate, more embarrassment for Scientologists everywhere, another dead forest, and an uncharitable little delay to your victims before they are made whole. The Ed Roberts case is, in my opinion, the proof of Time's theme: that you are - all of you at the top of your organization - a cult of greed. But worse, you squander your plunder, as witness Toronto, starve the good and fatten your PIs and proctors and their proctologists. And all with the fatuous excuse of a right to defend wrongness and attack rightness because your "religion's" stupidity is, in our courts of law, beyond question.

Anyway I want to have Ed's needs taken care of toot sweet. He probably wouldn't think less of you if you didn't apologize, but I think it's a good idea and sure couldn't hurt.

3. I don't care what order everything is done in. I think whatever is most practical, sensible and ergonomically sound is the way to approach this particular program, which, I'm sure can be wrapped up in a couple of days.

4. This is easy. These Ingram-generated efforts have only served to shine a light on your invidiously scheming enterprise. All your similarly baseless bar complaints against my other lawyer, Michael Flynn, came to nothing. You should learn from the earthworms. Filing no spurious bar complaints whatsoever they demonstrate their superior philosophy.

5. Although they're in the range of, I don't think fees and costs are over $500,000. Clearly nothing is going to happen

unless you cover my attorneys' fees and costs. To leave me with that indebtedness is unfair and unworkable. You will recall that I made a proposal in 1984, being then scared and weak: pay my lawyers' fees and costs of, I guessed, $150,000, and I'll quit. You, and in those days, Hubbard, said no way. I, less scared and much stronger, urge you to choose again.

6. Dismissal of the cross-complaint is easy. I'll take care of it.

8. I'm aware this may for a long time remain a pettiness you'd rather not confront. But I can guarantee that if you return my materials - the Hubbard letters manuscript, the Cones, all the other materials you and your PIs have stolen from me over the years, I will not bring criminal charges, and I won't even bring the subject up again.

9. You have to cancel the settlement agreement in order to demonstrate to yourselves that it was the wrong thing in which to put your faith. You will notice that when you cancel the agreement nothing will happen. Yet you will have freed me. And that is what you should make Scientology's only business: freeing people. You will also observe that when you free me you free yourselves; in fact you cannot yourselves be free unless you free me.

Regarding my relationship with you after you cancel the agreement, that is where you must reassert your faith. Have the faith that I will neither say nor write worse things about you if you free me to do so. As you know I can say some pretty pointed things about you now just because you won't cancel that degrading document. Put faith in what occurs in silence. Put faith in the inevitable.

7. You decide. If you think I did a lousy job unfomenting your litigation, pay me zippo. Even if it all works for everyone, timing inspired and ideas a Godsend, you don't have to pay me anything. I generally don't refuse what's offered. You know how much I'm worth.

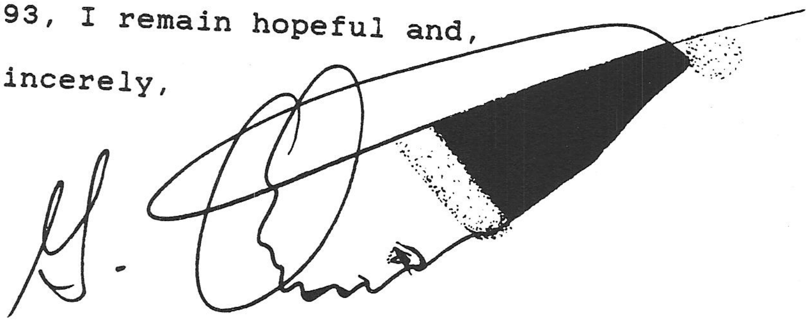
I haven't forgotten Wollersheim, Yanny I & II, the Aznarans, the CAN litigation, claimants all over the place, your government lawsuits, the rest of the settlement signatories, your taxes, nor your image and media distress, and I think it's appropriate to say that I can help you unfoment those problems as well. I would, of course, need half a chance.

If you look deep in your hearts I believe you'll find you really do not want Scientology's legacy to be one of suppression; suppression of the Constitution, human dignity, truth, religion, justice, even suppression of your own good selves. Wouldn't it be better to be known as the people who ended the madness in peace and style; a radical recognition of the transcendence of quantum scientology. LRH was Newtonian in his physics and relativistic epistemologically. I like to call one aspect of my philosophy, *inter alia* non-mutual exclusivity.

I believe that everyone will become a person of good will, that everyone already is, has been and will forever be, that there is progress and perfection, hope and reason, that to know who we are we must accept the truth of our relationship to our Creator, that all about us that we made is illusion, that we have reason to be grateful that is so, that our Creator, God, our Father Loves us in the same Love by which He created us and holds us always safe and always loved in that Love, that we, His children, are one and One with Him, that the means by which He is remembered, and hence our relationship, and hence who we are, and hence what we know, is forgiveness, that forgiveness is the recognizing of illusion for what it is, that creation is our nature, and that everything is all there is.

With a wish for peace in 1993, I remain hopeful and,

yours sincerely,



Gerald Armstrong
715 Sir Francis Drake Blvd.
San Anselmo, CA 949650
(415)456-8450

:ga

cc: Malcolm Nothling
Ed Roberts
Lawrence Wollersheim
Richard & Vicki Aznaran
Richard Behar
Ford Greene, Esquire
Paul Morantz, Esquire
Joseph A. Yanny, Esquire
Toby L. Plevin, Esquire
Graham E. Berry, Esquire
Stuart Cutler, Esquire
Anthony Laing, Esquire
John C. Elstead, Esquire
Michael J. Flynn, Esquire
Fr. Kent Burtner

Margaret Singer, PhD.
Cult Awareness Network
Daniel A. Leipold, Esquire
Church of Scientology International
Church of Scientology of California
Religious Technology Center
Church of Spiritual Technology
Church of Scientology ASHO
Church of Scientology AOLA
Founding Church of Scientology of Washington, D.C.
Church of Scientology Flag Service Organization
Church of Scientology of Arizona
Church of Scientology of Los Angeles
Church of Scientology of Stevens Creek
Church of Scientology of Sacramento
Church of Scientology of San Francisco
Church of Scientology of Washington State
Church of Scientology of Boston
Church of Scientology of Portland
Church of Scientology of New York

RABINOWITZ, BOUDIN, STANDARD, KRINSKY & LIEBERMAN, P.C.
ATTORNEYS AT LAW
740 BROADWAY AT ASTOR PLACE
NEW YORK, N.Y. 10003-9518

TELEPHONE (212) 254-1111
CABLE "RABOUDIN, N.Y." TELEX 225028
FACSIMILE (212) 674-4614

LEONARD B. BOUDIN (1912-1989)
MICHAEL B. STANDARD
MICHAEL KRINSKY
ERIC M. LIEBERMAN
ELLEN J. WINNER
EDWARD COPELAND
ELIZABETH ST. CLAIR
TERRY GROSS

BETH M. MARGOLIS
NICHOLAS E. POSER
DAVID B. GOLDSTEIN
DAVID GOLOVE*
HILLARY RICHARD
LINDA S. BOSNIAK

*ADMITTED IN CALIFORNIA ONLY

COUNSEL
VICTOR RABINOWITZ
HAYWOOD BURNS
LEONARD I. WEINGLASS
JOHN MAGE
JUDITH LEVIN

7-10-91

July 3, 1991

Gerald Armstrong
P.O. Box 751
San Anselmo, California 94960

Re: Malcolm Nuthling v. Church of Scientology

Dear Mr. Armstrong:

I have your letter of June 21. The Church is not interested in trying to settle the Malcolm Nuthing case in South Africa through your intervention. In addition, it is the position of the Church that any voluntary agreement by you to testify in such a case, in South Africa, without compulsion of subpoena, would violate your settlement agreement.

Very truly yours,

Eric Lieberman /SL

Eric M. Lieberman

EML/sl

June 21, 1991

Eric M. Lieberman, Esq.
Rabinowitz, Boudin, etc.
740 Broadway, Fifth floor
New York, NY 10003

Via Federal Express

Dear Mr. Lieberman:

I received a call yesterday from Malcolm Nothling, the plaintiff in a defamation case against the organization in South Africa. He asked me to testify at the trial in early August.

After listening to his story and his understanding of organization philosophy and practises I agreed. I said, however, that I would first attempt to bring about a peaceful resolution of the Scientology conflict. Hence I'm writing you.

You will receive a photocopy of this letter because the original of my significant holographs are the property of a third party corporation by contract. I will, nevertheless, sign the photocopy, not so much because you or the organization representatives might doubt that I am the writer, but to add fifteen dollars to the value of your archive.

stol

And all of that is just another way of saying that serious matters are nothing to lose a sense of humor over.

I am certain that the Nothling matter

can be resolved easily with the following organizational actions:

1. A sincere public apology for its "declare" and other antisocial acts.

2. A sincere, public and complete repudiation of " " fair" game," philosophy of attack, vengeance and hatred, and elimination from Scientology literature of all policies advocating such philosophy.

3. Monetary settlement.

Mr. Nothling says he has no hope that the organization would do

⑤

any of 1-3; and I recognize that it has exhibited no sign of rethinking its antisocial philosophy and practises. I also recognize that someday it will, and I do what I do because I believe it can be without, and not compelled by, a great human tragedy.

Thus far the organization has attempted to solve its problems with aggrieved individuals with mere monetary settlements and the occasional insincere announcement; e.g., Hubbard's famous elimination of the term "fair game," because it "causes bad PR," or the more recent blaming of the GO for all things bad and bastardly. And so the organization has brought upon itself more problems and made more aggrieved individuals who seek sincerity but end up taking insincerity and money.

stet

Because I will go wherever my help is ~~askef~~ asked for I will continue until the organization sincerely denounces "fair" "game" in all its forms, or kills me. It should be understood that I have many things to do in my work, far more important than the application of ethics to the organization of Scientology. I do this because it is asked of me by those aggrieved. When there are no longer any aggrieved asking for my help I will do something else. Clearly there are others aggrieved by other organizations or nations who can use my help. They simply have not asked for it. It may be that the Scientology issue must be resolved in my life before I am called to help the others. I am not, and I'm sure you're also not, unaware that the organization has used my willingness to respond to requests for my help to entrap me and attack me. The only observable effect of the organization's ops and web of deceit has been an increasing willingness to help those likewise aggrieved by them.

I truly believe that the organization's problems can be easily eliminated. It can only be done philosophically; and since its philosophy contains within it the philosophical idea that its philosophy cannot be changed, it continues to appear that nothing can be done. That fact does not make a philosophic shift difficult, it simply means that it's a pretty silly philosophy.

Hubbard didn't have any original ideas just because there are ~~or~~ no original ideas. There are only two ideas and Hubbard chose the least effective and most boring of the two; the same idea which prevails in society. He wasn't worse than everyone else; he was the same. Scientology. by espousing the same idea as Hubbard and everyone else is ineffective and boring.

The real opposition is to Scientology's insistence that it is a religion. It isn't. It could be, but it isn't. And it isn't no matter what any government says it is, or any court or any lawyer. Almost the last people you'd want determining what is or is not a religion are judges and lawyers, since their profession depends on conflict, which within a religion cannot exist.

Among all human activities there is only one which is religious — And that, forgiveness.

technically, and in every sense, is the recognition that what needs to be forgiven didn't happen. It is somewhat difficult, of course, for the organization, which uses peoples' pasts against them, to understand this simple fact.

I am certain that Hubbard caught a glimmer of this understanding, but did not triumph over his fear so chose instead of forgiveness, condemnation. There is nothing within that choice which threatens reality, or for which Hubbard should be condemned. It is merely not religion.

All of the things the organization does can be done by non-religious organizations or individuals. But forgiveness can only be done by the religious. Scientology, by publishing and defending its policy of unforgiveness; i.e., "“fair game,” “attack the attacker,” SP declares, sec checks, lower conditions, etc., etc., is not to be condemned;

it is to be forgiven; but
it is not a religion.

A church's only function
is forgiveness and sanctuary.
Since Scientology collects the
facts of its members' past,
for control, or any purpose,
it is not a church. The
lawyers and courts may
call it a church, but
it is like any non-church
organization; e.g., KGB,
~~go~~ republican party, etc.
A church to be a church
cannot maintain a cause
of action. Others, carrying
out their purpose, might

choose to defend it, but a church, to be a church, would not defend itself. Of course, an organization with a stated senior policy that the best defense is attack, cannot be a church.

The world would welcome Scientology's doing something effective, yet condemnation, attack and hatred are without effect, and so the world continues to wait. And the Scientologists continue the boredom of unforgiving

lives, and the lawyers
and the few in control
get rich and stay bored.
And yes there are un-
forgiving and bored on
both sides. But the
forgiving are on no side.
And I go where I'm asked
to help. You haven't
asked but I hope this
helps anyway.

Mr. Hothling will call
me in about a week.
I'll be reachable until
then at (604) 795-5852.

I believe you understand whence I come, and I believe someone can do something.

Very truly yours,

G.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

--oOo--

CERTIFIED COPY

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation,

Plaintiff,

vs.

No. BC 052395

GERALD ARMSTRONG; DOES 1 through 25, inclusve,

Defendants.

DEPOSITION OF

GERALD ARMSTRONG

Wednesday, July 22, 1992

Volume II, Pages 179 - 293

REPORTED BY: KATHERINE NG, CSR NO. 6350

learned that the Aznerans had instituted litigation against the organization?

A. I can't tell you the exact way that I learned, because, as I say, I heard about it, heard about aspects of it, read documents concerning it during those, probably two years prior to this.

Q. When you say two years prior to this, what do you mean?

A. Two years prior to executing the July 1991 document.

Q. Do you have any idea who you heard it from?

A. You mean the first time I ever heard of it, is that what you're asking me?

Q. Yes, how you learned they had sued the organization.

A. No, I can't say where I learned it from.

Q. And I take it at the time you executed this declaration, you were not working as a paralegal for Mr. Greene?

A. Right.

Q. And at some later time you began working as a paralegal for Mr. Greene and part of those duties were working on the case; is that right?

A. Right.

Q. Can you tell me when that was that

approximately you began working as a paralegal on the case?

MR. GREENE: For me?

MR. WILSON: Yes.

THE WITNESS: August 1991.

MR. WILSON: Q. Did you have any connection from August 1991 until the Azneran case, other than as a paralegal for Mr. Green?

A. Boy, that's a very broad question and so I'm --

Q. Let me narrow it down. Other than as a paralegal for Mr. Greene, have you had any conversations with the Aznerans since August of 1991?

MR. GREENE: Just so it's clear, you mean as an independent human as opposed to a paralegal?

MR. WILSON: Right. He could be talking to the Aznerans about baseball or politics.

MR. GREENE: As opposed to having direction to find out something from them?

MR. WILSON: I suppose it's possible they could have talked about the case not in connection with his being a paralegal, although I don't know.

MR. GREENE: I don't think it's possible.

THE WITNESS: So the answer is yes.

MR. WILSON: Q. Okay. Can you tell me, other than as to those communications as the answer is "yes", how many have there been?

A. There's one that comes to mind.

Q. Okay, which one is that? When did it occur? What was the substance of it?

A. My recollection is two or three months ago. And I communicated with Vicky Azneran at that time for the purpose of getting some information for my own litigation.

Q. Okay. Can you tell me what you asked her, what information you wanted to get?

MR. GREENE: Now, I'll instruct you, Mr. Armstrong, not to answer that question based on the attorney workproduct privilege.

MR. WILSON: That's --

MR. GREENE: That's being asserted in the case of CSI v. Armstrong.

MR. WILSON: Are you saying then that he did that as a paralegal in his own case?

MR. GREENE: Yes.

MR. WILSON: I don't want to waste a lot of time on this. I take it if I ask him about any communications he had with the Aznerans after August 1991 through the present, you would assert the attorney workproduct privilege?

MR. GREENE: No, I wouldn't. I would only assert it in responding to a question that would necessitate a disclosure of substantial communications acquired by Armstrong while acting in the capacity as, one, paralegal on Azneran; or, two, paralegal on Armstrong. If there were any other communications with the Aznerans, that's, so to speak, fair game.

MR. WILSON: Okay.

Q. Let me ask you the question framed in terms of Mr. Greene's parameters.

Other than as a paralegal on the Azneran case or a paralegal on your own case, have you had any communications with the Aznerans since August of 1991?

A. No.

Q. I take it you're currently working as a paralegal on both of the cases?

A. I can say this about that, and that is that both cases are in the office and I am a paralegal in the office. But at present, I'm not doing any work on the Azneran case.

Q. Okay. So you're not, do you consider yourself to be a paralegal that works on the Azneran case or not? I just want to know so I can ask you about communications with the Aznerans.

A. Well, I think you can go ahead and ask me about communications with the Aznerans for the simple fact that assert it in responding to a question that would necessitate a disclosure of substantial communications acquired by Armstrong while acting in the capacity as, one, paralegal on Azneran; or, two, paralegal on Armstrong. If there were any other communications with the Aznerans, that's, so to speak, fair game.

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MR. WILSON: Are you saying then that he did that as a paralegal in his own case?

MR. GREENE: Yes.

MR. WILSON: I don't want to waste a lot of time on this. I take it if I ask him about any communications he had with the Aznerans after August 1991 through the present, you would assert the attorney workproduct privilege?

MR. GREENE: No, I wouldn't. I would only

BOWLES & MOXON
ATTORNEYS AT LAW
6255 SUNSET BOULEVARD
SUITE 2000
HOLLYWOOD, CALIFORNIA 90028

(213) 661-4030
TELECOPIER (213) 662-6419

TIMOTHY BOWLES *
KENDRICK L. MOXON ±
LAURIE J. BARTILSON †
HELENA K. KOBRIN ‡

* ALSO ADMITTED IN OREGON
± ALSO ADMITTED IN THE DISTRICT OF COLUMBIA
† ALSO ADMITTED IN MASSACHUSETTS
‡ ALSO ADMITTED IN FLORIDA
§ ALSO ADMITTED IN ILLINOIS
# ALSO ADMITTED IN OKLAHOMA

WILLIAM D. KATZ
DEBRA S. TOBIAS
PETER M. JACOBS
JEFFREY S. ADELMAN
RANDALL A. SPENCER §
ROBERT A. WIENER #
JAMES J. JACKSON
KAREN L. BROWN

OF COUNSEL
MARCELLO M. DI MAURO
KAREN D. HOLLY ±
JEANNE M. GAVIGAN

562

July 7, 1992

BY TELEFAX AND U.S. MAIL

Ford Greene
Hub Law Offices
711 Sir Francis Drake Boulevard
San Anselmo, California 94960-1949

Re: Church of Scientology International v. Armstrong;
Aznaran v. Church of Scientology of California, et al.

Dear Mr. Greene:

I received your notice of association back into the Aznaran case today, and I must admit that I found your actions quite puzzling.

At deposition, Gerald Armstrong has testified both that he continues to work for you, and that he has no intention of following the order issued by Judge Sohigian which prevents him from providing assistance to the Aznarans in their lawsuit. Under these circumstances, you as well as he seem very willing to flout Judge Sohigian's orders and risk the penalty of contempt.

Your employment of Armstrong to work on this case has already given rise to serious breach of contract claims against Armstrong. For you, fully aware of both the terms of the agreement and of the preliminary injunction, to employ Armstrong in any capacity that could result in his providing you with aid in the Aznaran case, would be not simply a contempt of court, but also tortious interference with the contract between my client and Armstrong. Kindly inform me immediately what steps you have taken and will continue to take to ensure that Armstrong does not aid you in your work on this case or any other in which any of the settlement beneficiaries or signatories are parties.

I look forward to your prompt reply.

Very truly yours,

BOWLES & MOXON

Laurie J. Bartilson

LJB:mfh

cc: Paul Morantz, Esq.
Andrew H. Wilson, Esq.

HUB LAW OFFICES
711 SIR FRANCIS DRAKE BOULEVARD
SAN ANSELMO, CALIFORNIA 94960-1949
(415) 258-0360

FORD GREENE
LAWYER

LICENSE NO 107601
FACSIMILE (415) 456-5318

July 11, 1992

LAURIE J. BARTILSON, ESQ.
Bowles & Moxon
6255 Sunset Boulevard, Suite 2000
Los Angeles, California 90028

RE: *Church of Scientology International v. Armstrong*
[Former Marin County Superior Court No. 152 229]
Los Angeles Superior Court
Case No. **BC 052 395**

Dear Ms. Bartilson:

I am receipt of your letter dated July 7, 1992, regarding your claim the Mr. Armstrong is violating Judge Sohogian's preliminary injunction because I again represent the Aznarans.

I reject your attempt to penetrate the inner sanctum of my law practice, force a waiver the attorney work product privilege, and set yourself up as some type of monitor of my law practice by requesting that I inform you of "what steps [I] have taken and will continue to take to ensure that Armstrong does not aid [me] in my work" against Scientology.

As to your veiled threat of suit for tortious interfence with the contract between Scientology and Gerry, such an effort not only would be a misgiuded attempt to interfere with my contracts with my clients but an effort to deprive Armstrong of his Sixth Amendment right to counsel.

I have and will do my best to avoid any violations of Judge Sohigian's somewhat cryptic and difficult to enforce order. Based upon the confidentiality required to run my law practice, particularly with respect to your clients' ongoing efforts to intrude and invade the same, you will simply have to take my word for it.

Sincerely,

FORD GREENE

:acg
cc: Gerald Armsstrong
Paul Morantz, Esq.
Andrew H. Wilson, Esq.

BOWLES & MOXON
ATTORNEYS AT LAW
6255 SUNSET BOULEVARD
SUITE 2000
HOLLYWOOD, CALIFORNIA 90028

(213) 661-4030
TELECOPIER (213) 662-6419

TIMOTHY BOWLES *
KENDRICK L. MOXON ±
LAURIE J. BARTILSON †
HELENA K. KOBRIN ‡

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RANDALL A. SPENCER §
ROBERT A. WIENER #
JAMES J. JACKSON
KAREN L. BROWN

OF COUNSEL
MARCELLO M. DI MAURO
KAREN D. HOLLY ±
JEANNE M. GAVIGAN

July 18, 1992

TELEFAX AND U.S. MAIL

Ford Greene
HUB Law Offices
711 Sir Francis Drake Blvd.
San Anselmo, CA 94960-1949

RE: Church of Scientology International v. Armstrong;
Aznaran v. Church of Scientology of California, et al.

Dear Mr. Greene:

I have received your letter of July 11, 1992, responding to my request for information and confirmation that Gerald Armstrong is not doing para-legal work for your office on the Aznaran case. Your response is wholly inadequate, unsatisfactory and appears to be untrue.

Specifically, Mr. Armstrong recently called me from your office and asked me to fax him documents in the Aznaran case. When I cautioned him that the terms of the Armstrong preliminary injunction forbade him from assisting civil litigants against the Church, he replied that he was trying to help. By this I understand that Armstrong is assisting in your law office on Aznaran case matters. Naturally, I refused to send him anything.

The preliminary injunction issued in the Armstrong matter is neither "somewhat cryptic" nor "difficult to enforce." It is both narrow and specific. In the face of the above evidence that Armstrong is violating the injunction and your refusal to provide information as to the steps you have taken to prevent Armstrong from continuing to violate the Court order, I demand that Armstrong immediately cease all work on the Aznaran case and that you assure me, in writing, that he has done so.

Your prompt attention to this matter is appreciated.

Respectfully,

BOWLES & MOXON

Laurie J. Bartilson

cc: John C. Elstead
Paul Morantz
Andrew H. Wilson

PROOF OF SERVICE

I am employed in the County of Marin, State of California. I am over the age of eighteen years and am not a party to the above entitled action. My business address is 711 Sir Francis Drake Boulevard, San Anselmo, California. I served the following documents: PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR CERTIFICATION OF ISSUES FOR APPEAL; ORDER

on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California: SEE SERVICE LIST

[X]	(By Mail)	I caused such envelope with postage thereon fully prepaid to be placed in the united States Mail at San Anselmo, California.
[ ]	(Personal Service)	I caused such envelope to be delivered by hand to the offices of the addressee.
[ ]	(State)	I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
[X]	(Federal)	I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

DATED: July 3~~1~~0, 1992

Aznaran v. Scientology: Service List

JOHN CLIFTON ELSTEAD
Attorney at Law
4900 Hopyard Road, Suite 240
Pleasanton, California 94588

Earle C. Cooley
COOLEY, MANION, MOORE, & JONES, P.C.
21 Custom House Street
Boston, Massachusetts 02110

Laurie J. Bartilson
BOWLES & MOXON
6255 Sunset Boulevard, Suite 2000
Los Angeles, California 90028

James H. Berry, Jr.
BERRY and CAHALAN
2049 Century Park East
Los Angeles, California 90067

PROOF OF SERVICE

I am employed in the County of Marin, State of California. I am over the age of eighteen years and am not a party to the above entitled action. My business address is 711 Sir Francis Drake Boulevard, San Anselmo, California. I served the following documents: PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR CHANGE OF VENUE TO NORTHERN DISTRICT OF TEXAS; ORDER on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California: SEE SERVICE LIST

[X] (By Mail) I caused such envelope with postage thereon fully prepaid to be placed in the united States Mail at San Anselmo, California.

[ ] (Personal Service) I caused such envelope to be delivered by hand to the offices of the addressee.

[ ] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[X] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

DATED: July 3~~1~~9th, 1992

Aznaran v. Scientology: Service List

JOHN CLIFTON ELSTEAD
Attorney at Law
4900 Hopyard Road, Suite 240
Pleasanton, California 94588

Earle C. Cooley
COOLEY, MANION, MOORE, & JONES, P.C.
21 Custom House Street
Boston, Massachusetts 02110

Laurie J. Bartilson
BOWLES & MOXON
6255 Sunset Boulevard, Suite 2000
Los Angeles, California 90028

James H. Berry, Jr.
BERRY and CAHALAN
2049 Century Park East
Los Angeles, California 90067

571

HUB LAW OFFICES
711 SIR FRANCIS DRAKE BOULEVARD
SAN ANSELMO, CALIFORNIA 94960-1949
(415) 258-0360

FORD GREENE
LAWYER

LICENSE No. 107601
FACSIMILE (415) 456-5318

July 19, 1992

Laurie J. Bartilson, Esq,
BOWLES & MOXON
6255 Sunset Boulevard, Suite 2000
Los Angeles, California 90028

By Telecopier

Jeanne M. Gavigan, Esq.
BOWLES & MOXON
6255 Sunset Boulevard, Suite 2000
Los Angeles, California 90028

By Telecopier

RE: *Refund Claim* of Tillie Hanna Good from
Church of Scientology of River Park Mission

Tort Claims Against:

- Religious Technology Center
- Church of Scientology International
- Scientology Missions International
- Church of Scientology of River Park Mission
- Hubbard Dianetics Foundation
    - Brian Anjo
    - Tree Nebecker
    - Russell McKevits
    - David Brink
    - Susan Doe
    - Richard Doe
    - Paul Doe

WARNING: One year statute expires on July 22, 1992. In absence of a tolling agreement, a lawsuit will be filed.

Dear Mss. Bartilson and Gavigan:

I have agreed to represent Tillie H. Good with respect to certain claims she possesses against the above referenced corporate components and individual agents of the Scientology Organization. The purpose of this letter is for settlement only and no part of it shall be used in any proceeding, formal or informal, aside from settling her claim.

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As you will note from the statement of facts set forth below, the one year statute of limitation applicable to the torts of assault, battery, and intentional infliction of emotional distress as they apply to this claim will run on July 22, 1992. I need immediate confirmation that the running of the one year statute of all claims as of July 20, 1992, will be tolled until August 18, 1992, and thereafter be subject to revocation on two weeks notice. Otherwise, I will have no choice but to file a complaint in order to save Ms. Good's claims.

Synopsis of Claim

Without indulging in an extended statement of facts, I provide you with the following synopsis. At the time Tillie H. Good, an individual with a history of child sexual abuse, became involved with Scientology, she was embroiled in a tormentuous relationship with a man in Chicago, Eric Smith. Brian Anjo of the River Park org first contacted her by telephone which he successfully developed into a home contact and then personality test at the franchise.

Both Anjo and Tree Nebecker regged Ms. Good by playing upon the vulnerabilities she had disclosed to them regarding her relationship with Smith including but not limited to that she felt responsible for the difficulties in that relationship, that she was not good enough for her boyfriend, feeling that she didn't deserve to be loved, and that she was suicidal. After eliciting Ms. Good's psychological vulnerabilities, Anjo and Nebecker interjected confusion and fear by telling her that she would commit suicide if she did not take the Life Repair course and that said course was the only thing available anywhere in the world upon which she could rely to assist herself in the elimination of her depression and attainment of spiritual freedom from human emotion and reaction. The confusion and dependency that the Scientologists engendered was further developed by the inculcation of Scientology ideology concerning "negative charges," [1] for the release thereof, and the Bridge to Total Freedom.

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[1] "Charge": The stored quantities of energy in the time track; stored energy or stored re-creatable potentials of energy. The electrical impulse on the case that activates the meter. Harmful energy or force accumulated and generated in the reactive mind, resulting from the conflicts and unpleasant experiences that a person has had." HCOB 15 July 78, Scientology CS-1, Definitions Sheet.

The strategy to register Ms. Good for Life Repair was further developed by Nebecker and Anjo's provision of advice to Ms. Good that she was psychologically at risk and in danger on one hand while on the other hand eliciting from Ms. Good that her purpose in life was to serve God and mankind so as to bring more peace, love and harmony to the planet and help people to love themselves and others. They repeatedly told her the only way out was Life Repair. They kept her at the org very late hours, knowing that she had to arise early, in a successful effort to break down her resistance to the $7,000.00 price tag because she didn't have the money.

Once the Scientologists overcame Ms. Good's resistance, they exploited her credit cards by raising the limits thereon and then making maximum charges in order to pay for the services they had regged her for. They told her that her resistance to purchasing Life Repair was the consequence of such negative charges, thus pitting Ms. Good against herself so as to engineer the posture of an easy mark.

They promised her she would become a brand-new person, that she would have confidence, power, high self-esteem and could get a better-paying job so that paying off her credit cards would present no problem whatsoever. Russ said she deserved the benefit of Life Repair and guaranteed that it would make Tillie a better person. Tillie asked whether he was sure and whether Life Repair would release all of her negative charges so that such charges would never effect her again. Russ said yes and told Tillie she should trust him and Tree since their purpose and occupation was to help and serve people like Tillie. Russ exclaimed there was no more time to waste and that Tillie must make her decision immediately. He emphasized that upon completion of Life Repair, Tillie could continue Up the Bridge to become Clear which was a wonderful place to be. Over and over again, Tillie asked Russ whether Life Repair would eliminate the negative charges in her life so that those charges would never affect her again. Russ reassured her that once she released the negative charges, they would never ever affect her again. He told Tillie she would be able to control her life and would not be controlled by other people or situations.

Such promises were false, misleading and were never fulfilled. She relied on them in good faith and was hurt by those who were promising to make her life more meaningful in a relationship of confidence and trust.

Ms. Good was sent to ethics when she complained that the promised benefits never were forthcoming. She was instructed to and did disconnect from her friends because her relationships to them was the cause to which her failure to make case gain was attributed. She was constantly hounded, almost universally late at night, for more money. Despite her pleas to be left alone, staff constantly worked on her in an undoubted effort to raise their own stats to levels acceptable to upper management.

When she balked at incurring further debts on her charge cards, Tillie was berated, demeaned and cussed-out for hours at a stretch. She was humiliated and threatened for asking questions or expressing dissent. Ultimately, she was subject of physical assault and battery by Brian Anjo in effort to force her into Tree Nebecker's regging office. This occurred on July 22, 1991 and caused her to leave Scientology for good.

Tillie H. Good never wants to return to Scientology.

She wants all of her money back. If her money is promptly returned, she will not sue for fraud, intentional infliction of emotional distress, assault, battery, breach of contract and rescission.

Demand

Ms. Good will settle any and all claims against the appropriate Scientology entities and personnel in consideration of $13,708.39, which is the amount, according to Scientology generated invoices, she has paid to Scientology. Copies thereof are enclosed for your review. This offer will expire on August 28, 1992.

Your clients are also on notice **not to destroy** any papers of any kind or description, including specifically, but not necessarily limited, to any papers regarding:

(1) Any financial arrangements leading to the payment of then-present and future goods and services from any Scientology-related organization; and/or

(2) Ms. Good's auditing files.

Finally, Ms. Good insists that Scientology representatives shall make no effort to contact her. All communications to Ms. Good shall be directed through my office. Failure to respect this request will result in action to obtain the appropriate restraining orders. Ms. Good's settlement check shall be made out jointly to her and to me as her attorney.

Please confirm your agreement regarding the suspension of the one year statute of limitation. Otherwise, Ms. Good will be required to file suit in order to stop such statute from running.

Sincerely,

FORD GREENE

:acg
Encls. (sent with telecopy and by mail)
cc: Tillie Hanna Good (with enclosures)

HUB LAW OFFICES
711 SIR FRANCIS DRAKE BOULEVARD
SAN ANSELMO, CALIFORNIA 94960-1949
(415) 258-0360

FORD GREENE
LAWYER

LICENSE NO. 107601
FACSIMILE (415) 456-5318

July 2, 1992

Laurie J. Bartilson, Esq,
BOWLES & MOXON
6255 Sunset Boulevard, Suite 2000
Los Angeles, California 90028

By Telecopier

William T. Drescher, Esq.
23670 Calabasas Road, Suite 338
Calabasas, California 91302

By Telecopier

RE: Refund Claim of Denise Cantin, D.O.
Against Scientology Organizations:

- Sterling Management
- Church of Scientology, Orange County
- Church of Scientology, Clearwater
- Church of Scientology, San Francisco
- Church of Scientology, Boston
- International Association of Scientologists
- Freewinds

IAS No. 00050649

Counsel:

Dr. Cantin has employed me to obtain a complete refund of all moneys she has paid to the above referenced organizations from November 1988 through September 1991. The purpose of this letter is for settlement only and no part of it shall be used in any proceeding, formal or informal, aside from settling her claim.

Dr. Cantin has spent a substantial amount of money on various Scientology courses and services. She has been misled by what Scientology representatives stated she would gain from purchasing its services, as well as statements that her sexual privacy would be respected and be free from intrusion. She has been hurt by the way she was treated after the commencement of her scientological affiliation.

An itemization of the amounts specific to each component of the Scientology organization is set forth in the Schedule of Scientology Expenditures enclosed herewith. Documentation of said expenditures will follow with the mailed copy of this letter.

Based upon Scientology's treatment and use of her, Dr. Cantin possesses various tort and contract causes of action, including but not limited to Molko type fraud and intentional infliction of emotional distress, as well as breach of contract. Provided that a full refund is provided, Dr. Cantin is willing to sign a mutual release and waiver and to forego all Scientology services in the future. Otherwise, she has instructed me that she will commence litigation not only to recoup the money which Scientology has taken from her, but also to obtain compensatory and punitive damages as well.

The facts underlying Dr. Cantin's claim are as follows. In October 1988, a representative of Sterling Management solicited Dr. Cantin, an osteopath, to attend a seminar held out to improve her professional practice. Representations were made to Dr. Cantin that the seminar would cause an immediate improvement in patient flow and income.

Dr. Cantin attended the seminar held at the Worcester Marriott where she was advised to enroll in a program of business courses and private consultations at the headquarters of Sterling Management in Glendale, California. She was told the courses were specifically geared toward her office. Dr. Cantin paid $11,500 to sign up.

Dr. Cantin was never advised up front that Sterling was affiliated with Scientology even though she was required to take a personality test as a condition of participating in Sterling training. When she arrived in California on November 21, 1988, "Miles" advised Dr. Cantin that her personality test revealed she was suicidal. Thus, the argument went, she could not properly conduct her business unless she was happy and could improve her life. Of course, Miles had just the program for her. Indeed, Miles told Cantin she needed to discuss this immediately and a woman was available that night for such purpose.

The woman with whom Dr. Cantin spoke on December 2, 1988, Pam or Paula, convinced her that Dianetics would straighten out her life and that she should forego her plans to attend a medical conference in order to receive Dianetics processing instead. Paula took Cantin to the Orange County franchise, showing her a book on religious philosophy before they left. Dr. Cantin became upset because she wanted to avoid religious groups. She was told that she did not need to worry because Scientology was not like any other religion in that it merely taught an individual how to handle life better. Dr. Cantin was further told that she would be allowed to be herself, would not be taught about God and that people from all religious denominations were Scientologists.

The following day, Dr. Cantin was taken from her hotel to the Orange County Scientology Organization and signed up for an introductory program for $2,500. Many people started to speak to Dr. Cantin about a "Bridge" in Scientology that led people to spiritual freedom resulting in an increased ability to cope with life and be in control of their environment. Dr. Cantin was told that such results were accomplished by very precise scientific methods that worked for everyone. She was told that there was no place else on earth where such "technology on handling life" was offered and that many of the things that kept her from achieving her full spiritual potential would be handled by doing the "Bridge."

On December 6, 1988, Dr. Cantin met David Worthen. Worthen flattered Dr. Cantin regarding the rate of her progress up the Bridge. He introduced her to auditing, telling her that it was going to offer her a quicker way to go up the Bridge which many doctors chose because they were more able and thus, could advance more quickly. He stated that auditing would enable her to communicate with anyone about anything without fear and enable her to confront any situation in her office, or elsewhere, without backing off. Worthen also told her that she was attracting bad things to herself and that as she went up the Bridge she would learn why and how to stop such attractions. He represented to her that Scientology/Dianetics could cure her allergies and irritable bowel syndrome.

When Worthen asked Cantin what she wanted in order to be happy, she said she wanted to have a good relationship and to improve her professional practice. She expressed great reservations about being involved in anything "religious" because religious organizations laid a lot of guilt on people. Dr. Cantin asserted that she was gay and did not want to become involved in Scientology if her sexual orientation was ever going to be a problem or if anyone would ever try to change her. Worthen assured Dr. Cantin that her sexuality would never become an issue, that Scientology would never attempt to interfere with her "beingness," and that she was the one who would control the decisions that were made regarding her life.

When Dr. Cantin asked Worthen how much this would cost, he advised that to get to the state of "clear" would cost $30,000.00 and that she had to decide immediately because the offer would not be available later. Worthen insisted that she decide to take control of her life by buying Scientology and guaranteed that she would never regret it. He instructed her to give him a check for the money that she had in her bank account and to call her father in order to borrow the remainder of the money required. Worthen instructed Cantin to lie in order to obtain the money and tell her father that money was for a business program for her practice. She paid him $30,120.00 to go up the Bridge to clear.

She was assigned an auditor and kept at Orange County while the cult officials brought her Sterling courses to her which she studied on her own. Since Dr. Cantin's primary concern was to improve her professional practice, she inquired when she could return to the Sterling training. She was advised that before she returned to Massachusetts, she would be returned to Sterling where she would meet with a consultant to work out a plan for her office. When she was returned to Sterling, no consultant was provided to meet with her before she returned home.

Upon her return to her office, Dr. Cantin attempted to implement Sterling's bonus system and statistics procedures that she learned on her own after she had been shunted into scientological quasi-religious indoctrination. Dr. Cantin's staff rebelled. Sterling officials consulted with her, instructing her to terminate a certain employee. When she did, most of her staff quit. Her auditor, Mark Stout, advised her to return to Orange County to continue her journey up the Bridge so that she could handle her office.

In mid-January 1989, Dr. Cantin returned to Orange County for three weeks of confidential auditing, 15 hours per day. On January 24, 1989, David and Mary Murphy pressured Dr. Cantin to purchase training courses that would teach her how to help and handle others, something that she could not obtain from auditing. They insisted that she make a decision immediately and to call the bank to obtain the money required. The next morning Mary Murphy picked her up at her hotel so that she could purchase the training and return to auditing. Dr. Cantin said that her business was in financial jeopardy because she was spending so much time in Scientology, that she had given all the money that she possessed, and had gone into debt for what she had already purchased. Mary insisted that Dr. Cantin borrow more money and should max-out her credit cards to pay for the services. Mary Murphy and David Worthen told Dr. Cantin stating that she could obtain a scholarship at half price because she was a powerful being who was rapidly progressing, but in fact there was no real savings. In consequence of the pressure and deception, on January 26, 1989 Dr. Cantin called Massachusetts and obtained a $10,000.00 loan over the telephone and used her credit cards to purchase the remainder of the $18,000.00 package. Then Worthen and Murphy allowed her to return to her auditing sessions.

Upon return to auditing, Dr. Cantin was sent to ethics during the course of which her sexual orientation was criticized by the ethics officer, Sharon. Dr. Cantin was instructed to disconnect from her lover and directed to change her lifestyle. Due to the harassment about her sexuality, Dr. Cantin became upset. Sharon also instructed Dr. Cantin to discontinue psychotherapy and to disconnect from her therapist. She finally was allowed to cease ethics processing and to return to auditing, even though at that time she was unable to complete it.

On February 2, 1989, Mary Murphy told Dr. Cantin that she didn't have enough hours left on her account in order to progress up the Bridge to clear and needed to pay an additional $10,000.00. Although Dr. Cantin initially resisted paying this additional $10,000.00, she was told that this sum was needed for her to complete her auditing and that no less sum of money would suffice. Murphy told her she could not start something which they estimated would take longer than the hours left on account. Thus, she couldn't finish her auditing. Already having invested much time, money and distress into auditing in Orange County, Dr. Cantin borrowed and paid an additional $10,000.00. Dr. Cantin was very distressed about having to pay more money, a distress concerning which Mark Stout, her auditor and others spent a lot of time assuaging. Ultimately, only $400.00 of the extra $10,000.00 payment was required to complete processing.

Dr. Cantin was not able to complete the auditing program and had to return to Orange County in March and April 1989 to complete her journey up the Bridge to clear. When she reached clear, David Worthen told her she was in a "danger zone" and needed quickly to do the OT levels in order to keep moving up the Bridge rapidly. Worthen told her that in doing so she would learn why she attracted negative things to herself and how to change that. Worthen said that although auditing had removed all negative personal things from her past, she needed to start to increase her spiritual abilities. He advised her of the L's programs in Florida that would sky rocket her as a being and blast off her practice as well.

Dr. Cantin returned to her practice in April 1989 to work off the bills she had accumulated and to make up for the time she had spent in Scientology. She was not able to implement what Sterling had instructed her to do and in response to her requests, Sterling provided no assistance which addressed her professional needs as an osteopath. Sterling started to advise her to engage in practices that were foreign to her knowledge of her profession. While Sterling told her to go to other osteopaths for the purpose of obtaining referral business, Sterling advised against bringing in a another doctor to assist Dr. Cantin with her case load whereby she was providing treatment to too many patients in consequence of using Sterling's technique.

While in Massachusetts in May 1989, Dr. Cantin started to receive telephone calls from a Sea Organization member who urged her to do the L's program in Florida and told her that the $9,600 left over in California could be transferred to Florida, even though such transfers were usually prohibited. When Dr. Cantin said that she wanted her money returned to her, she was told that in such case she could never receive any more Scientology training or services. She told Dr. Cantin that doing the L's would improve her professional practice, would remove all things that were stopping her in life and would sky rocket her to success. L-11 would give her a new life. L-12 would make her an "unshakable being" and provide absolute certainty about her "beingness." Dr. Cantin was told that the $9,600 in Orange County could be transferred to Florida, but that Dr. Cantin would have to pay additional money to manifest her good faith in order for this transfer to take place. Dr. Cantin assented to an additional $650 being put on her charge card, however, when she received her bill, $1,000, not the $650 she had authorized, had been charged.

Also in May 1989, Dr. Cantin then tried to start in Boston the courses that she had purchased to follow through on attaining clear as instructed by Mary Murphy and David Worthen. She was refused service in Boston because she had paid her money to Orange County. She spent months trying to obtain services from Boston. Ultimately, she received training in Boston where she was required to be on course for a minimum of 12 hours per week. Thus, she started to take courses all day on Wednesdays and on Friday afternoons. She did not do well on these course and received suggestions from Boston staff that she go to Florida to do the L's.

In July 1989, Dr. Cantin took three weeks from her practice to go to Florida in order to do L-11. She returned in December and January of 1989 and 1990 to complete L-12. She started to complain to Florida because she had received nothing from the L's as she was still on course in Boston, but still doing poorly. Her auditor in Florida called and advised her that something was wrong if she didn't get the gains she was supposed to obtain and needed to return to Florida for a review of her situation.

While Dr. Cantin was doing the L's program, she was approached by a Scientologist named David. David solicited Dr. Cantin to make an investment that would double or triple in 3-5 years and would assist in the preservation of Scientology materials. David and another Scientologist told Dr. Cantin how she had purchased prints with David and in consequence had doubled her money within one year. The three of them proceeded to Gallery 88 to inspect the prints. David promised that in a few years when Dr. Cantin wanted to sell the prints, Gallery 88 would sell them for her. She purchased four prints for which she was charged $11,500.00.

In February 1990, Dr. Cantin returned to Florida for four days for such review, then returning to Massachusetts. For the following year, Dr. Cantin continued her Scientology courses, but still got nowhere. She decided to stop. After tremendous pressure and harassment from the scientologists at the Boston Organization, she assented to speak with Tom Dewingart at the Boston Org. She told him that she got nowhere with Scientology and got nothing out of the L's which were very expensive and touted as the most powerful scientological programs available. She also advised him that any benefit she obtained from auditing was short-lived at best. Tom convinced Dr. Cantin that Scientology worked for everyone, that were problems were probably minor in nature and susceptible of quick repair and to return to Florida for a few days for that purpose.

When she returned to Florida, she was sent to ethics. Wanda, the ethics officer, told her that because her mother worked for the state department of revenue in Massachusetts she was an Illegal PC and could receive no further auditing. Dr. Cantin demanded her money back. Carol Schwartz, Dr. Cantin's auditor, brought another auditor to speak to Dr. Cantin. She spent much time convincing Dr. Cantin that the Bridge is the only way to total freedom and there was no place else in the world where she could receive such instruction and assistance. Dr. Cantin was told that the reason she had so many problems in Scientology was because she was not trained in the "tech" and that in order to obtain such training, she had to complete her courses. Dr. Cantin returned to Massachusetts where she resumed her courses. Having no gains, she was sent to ethics. As part of her ethics handling, she was told that when one cannot get the tech in, it is because her ethics were out. In ethics, her gay lifestyle became an issue again.

In Boston, Dr. Cantin told staff member Jan Borowski that she was getting nowhere with Scientology. Borowski told Dr. Cantin to take the false purpose rundown to handle her beingness because being gay was related to some kind of false or evil purpose. Borowski strongly recommended the rundown because Dr. Cantin had already put so much time, money and effort into Scientology. Dr. Cantin paid the $10,000.00 to take the false purpose rundown. She got nothing out of the rundown.

In July 1991, Dr. Cantin commenced procedures to obtain a refund of her money from Scientology and to disconnect from it because she was feeling ripped off. As part of the alleged refund procedure, Dr. Cantin was directed to return to Florida to speak with staff members there. Upon her arrival in Florida, Dr. Cantin was taken to Wanda, the ethics officer. Dr. Cantin told Wanda that she wanted the results that everyone told her she should receive from the L's and auditing or her money back. Wanda said she would review Dr. Cantin's case and decide what to do.

Wanda set up another review for Dr. Cantin as well as a repair of her previous auditing. Then, Dr. Cantin was told to take the Key to Life course and the Life Orientation course which would get her back on track. She was taken to the International Association of Scientologists where she was told how important it was for her to help the association in fighting Scientology's battles. She was told that the only way that she could obtain a 25% discount on the courses that she was taking was to obtain a lifetime membership in IAS for $2,000.00.

When Dr. Cantin inquired how she could most rapidly complete the program in order to take away as little time as possible from her practice, she was told that the duration of the courses, if uninterrupted, was 5-6 weeks and could be accomplished fastest on a ship called the Freewinds. For $13,656.00 Dr. Cantin was sold the Key to Life and Life Orientation courses and five weeks accommodations on the Freewinds. She was not advised of any particular restrictions or requirements. Before she left Florida in July 1991 she was sent again to Wanda in ethics who advised her that she should suppress her lesbian feelings and direct her romantic inclinations toward men.

Returning to Massachusetts, Dr. Cantin made arrangements to take one month off from her practice. She also attempted to date men, but found this unnatural. Shortly thereafter, she became involved in a fulfilling relationship with a woman concerning which she told her auditor in Florida, who approved. Dr. Cantin commenced inquiries regarding bringing her friend on the Freewinds with her. Ultimately, Beatrice, the security officer for the Freewinds told Dr. Cantin that she was a security clearance reject because of her gay relationship. Further, Beatrice told Dr. Cantin that she was psychotic, deviant and hated children. She said the reason that Dr. Cantin had made no case gain was because she was gay and that she would not be allowed on the ship because she was out ethics.

Despite her continuing efforts since October 1991 to obtain a refund of the $13,656.00, Dr. Cantin's effort have thus far been frustrated.

Please consider this letter to be demand for $155,141.50 in consideration for which Dr. Cantin will execute a full and complete mutual release. Dr. Cantin acknowledges receipt of Chemical Bank Check No. 680500 in the amount of $9343.75 which she will forebear from cashing pending the resolution of the remainder of her claim.

This offer will be open for 30 days provided that by July 10, 1992, you confirm, in writing, that the running of all applicable statutes of limitations will be suspended pending our efforts to settle Dr. Cantin's claim.

Your clients are also on notice not to destroy any papers of any kind or description, including specifically, but not necessarily limited, to any papers regarding:

(1) Any financial arrangements leading to the payment of then-present and future goods and services from any Scientology-related organization; and/or

(2) Dr. Cantin's auditing files.

Finally, Dr. Cantin insists that all efforts by Scientology representatives to contact her cease immediately. All communications to Dr. Cantin shall be directed through my office. Failure to respect this request will result in action to obtain the appropriate restraining orders.

Please confirm your agreement regarding the suspension of all statutes of limitations. Otherwise, Dr. Cantin will be required to file suit in order to stop all such statutes from running.

Sincerely,

FORD GREENE

:acg
Encls. (not sent with telecopy)
cc: Denise Cantin, D.O. (by fax and by mail with enclosures)

SCHEDULE OF SCIENTOLOGY EXPENDITURES

Denise Cantin, D.O.

IAS No. 00050649

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Sterling Management:	$14,388.00
Scientology, Orange County	64,307.25
Scientology, Clearwater	35,655.00
Gallery 88	11,500.00
Scientology, Boston	11,635.00
Scientology, Freewinds	13,656.25
Scientology, San Francisco	2,000.00
International Ass. Scientologists	2,000.00
TOTAL DEMAND	**$155,141.50**

HUB LAW OFFICES
711 SIR FRANCIS DRAKE BOULEVARD
SAN ANSELMO, CALIFORNIA 94960-1949
(415) 258-0360

FORD GREENE
LAWYER

LICENSE NO. 107601
FACSIMILE (415) 456-5318

September 4, 1992

Marcello M. Di Mauro, Esq.
BOWLES & MOXON
6255 Sunset Blvd., Suite 2000
Los Angeles, CA 90028

By Telecopier

RE: ED ROBERTS
IAS No. 11430-027-0002-6813

Dear Mr. Di Mauro:

Further to our telephone conversation yesterday following please find a number of invoices referencing at least some of the funds expended by Mr. Roberts on Scientology concerning which he wants a refund.

In this regard and so as to preserve whatever rights Mr. Roberts may at this time possess, we will need a tolling agreement (with a 30 day fuse) freezing no later than September 8, 1992, the current status of any and all statutes of limitation. Otherwise, in order to preserve Mr. Roberts' rights a lawsuit must be filed immediately.

Please call me and tell me the likelihood we can work this out. Otherwise, I will have to prepare a lawsuit over the weekend and file it on Tuesday.

Sincerely,

FORD GREENE

:acg
cc: Ed Roberts